



RESOLUTION NO. U-11131

1 A RESOLUTION adopting Public Utility Board Strategic Directives five and six
2 on Environmental Leadership and Innovation.

3 WHEREAS in response to changes in the utility industry, and to ensure
4 that Tacoma Public Utilities (TPU) continues to meet the Tacoma Public Utility
5 Board's goals of delivering affordable, reliable, and environmentally sensitive
6 services, the Board is developing policies concerning Government Processes,
7 Board-Director Linkage, and Strategic Directives, and
8

9 WHEREAS this resolution adopts Strategic Directives five and six, that
10 guide TPU's efforts to effectively and efficiently address current and future
11 challenges, mitigate risks, pursue strategic opportunities, optimize services for
12 TPU customers, and capture the performance expectations of the Board, and
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14 WHEREAS the Environmental Leadership policy establishes TPU's
15 commitment to being a steward of the region's bountiful natural resources, and
16 a leader in the preservation, protection, and restoration of those resources while
17 maintaining excellent delivery of services. To ensure that we fulfill our
18 operational duties in the future, we must balance our resource usage with the
19 health of our environment, and
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21 WHEREAS the Innovation policy provides that TPU is committed to
22 fostering a culture of innovation to meet challenges such as aging
23 infrastructure, shifting workforce dynamics, uncertain sources of supply,
24 changing regulatory requirements, dynamically changing markets, and rising
25 customer expectations today and into the future, and
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1 WHEREAS innovation refers to the fresh thinking that creates value for
2 customers, including: 1) Improved processes, policies, and ways of doing
3 business; 2) New or enhanced products and services; and 3) New technologies
4 and infrastructure, and
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6 WHEREAS an innovation culture will enable an environment of creativity,
7 experimentation, and incubation to achieve new approaches to serve our
8 customers, manage assets, finance investments and realize superior utility
9 performance with the added benefit of enhancing sustainability, and
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11 WHEREAS these policies were developed at regularly-scheduled Board
12 study sessions and/or properly-noticed public meetings and all future Board
13 reviews and amendments will be handled similarly, and
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15 WHEREAS the Board has committed to monitor and ensure compliance
16 with Board policies. This oversight provides an opportunity for the Board and
17 staff to clarify, revise and develop new policies when necessary as TPU
18 navigates changes in the utility industry, and
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20 WHEREAS the Board and Director have determined that adopting the
21 Public Utility Board Strategic Directives five and six on Environmental
22 Leadership and Innovation is in the best interests of Tacoma Public Utilities and
23 the ratepayers; Now, Therefore,
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1 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

2 That Public Utility Board Strategic Directives five and six on
3 Environmental Leadership and Innovation, in the form as on file with the Clerk,
4 are adopted and approved.

5 Approved as to form:

6 
7 _____
8 Chief Deputy City Attorney

_____ Chair

_____ Secretary

9 _____
10 Clerk

Adopted _____



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
FROM: Tom Morrill, Chief Deputy City Attorney
Charleen Jacobs, Executive Assistant and Clerk of the Board
MEETING DATE: January 8, 2020
DATE: December 24, 2019

SUMMARY: A resolution adopting Public Utility Board Strategic Directives (SD) five and six on Environmental Leadership and Innovation.

BACKGROUND: It is a time of monumental change in the utility industry. Utilities must embrace innovation and move quickly to find new and better ways to deliver affordable, reliable, and environmentally sensitive services to their customers. With this in mind, the Tacoma Public Utility Board launched a process to develop policies concerning Government Processes, Board-Director Linkage, and Strategic Directives.

This resolution adopts Strategic Directives five and six listed above. Strategic Directives guide TPU's efforts to effectively and efficiently address current and future challenges, mitigate risks, pursue strategic opportunities, and optimize services for the TPU customers. Strategic Directives also capture the performance expectations of the Board.

The Environmental Leadership policy establishes TPU's commitment to being stewards of the region's bountiful natural resources, and a leader in the preservation, protection, and restoration of those resources while maintaining our excellent delivery of services. It is clear that in order to ensure we fulfill our operational duties into the future, we must balance our resource usage with the health of our environment.

The Innovation policy provides that TPU is committed to fostering a culture of innovation to meet challenges such as aging infrastructure, shifting workforce dynamics, uncertain sources of supply, changing regulatory requirements, and dynamically changing markets and rising customer expectations today and into the future. Innovation refers to the fresh thinking that creates value for customers, including: 1) Improved processes, policies, and ways of doing business; 2) New or enhanced products and services; 3) New technologies and infrastructure. An innovation culture will enable an environment of creativity, experimentation, and incubation to achieve new approaches to serve our customers, manage assets, finance investments and realize superior utility performance with the added benefit of enhancing sustainability.

These policies were developed at regularly scheduled Board study sessions and all future reviews and amendments to the Public Utility Board policies will be handled similarly.

The Public Utility Board has committed to monitor and ensure compliance with Board policies. This oversight provides an opportunity for the Board and staff to clarify, revise and develop new policy when necessary as TPU navigates changes in the utility industry.



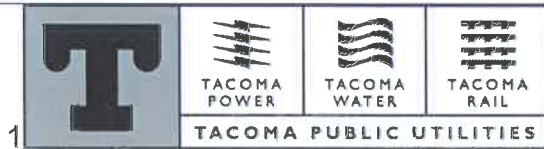
Board Action Memorandum

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? N/A

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? N/A

ATTACHMENTS: Strategic Directive 4 – Environmental Leadership; Strategic Directive 5 - Innovation

CONTACT: Jackie Flowers, Director of Utilities



PUBLIC UTILITY BOARD POLICY

Category: Strategic Directive	Title: Environmental Leadership
Date of Adoption: January 8, 2020	Policy Number: SD-5
Revision Date:	Resolution No.

Purpose

Tacoma Public Utilities is committed to being stewards of the region's bountiful natural resources, and a leader in the preservation, protection, and restoration of those resources while maintaining our excellent delivery of services. It is clear that in order to ensure we fulfill our operational duties into the future we must balance our resource usage with the health of our environment.

Values

1. TPU Board joins the Tacoma City Council in supporting Council Resolution 39427, the Environmental Action Plan, and prioritizing strategies and actions for improving environmental quality. Specifically, TPU:
 - a. Will achieve exceptional quality of life for every generation and will leave a legacy of stewardship; and
 - b. Will achieve lasting and equitable prosperity; build a safe, healthy, attractive, and vibrant community; and minimize negative impacts in order to conserve the natural resources that sustain it.
2. TPU believes climate change impacts how we provide services now and will, if unabated, continue to bring instability and negative impacts to our community's quality of life in the future. Efforts should go beyond mitigation and focus on policies to reduce atmospheric carbon.
3. TPU believes quality of life and long-term economic prosperity are contingent on a healthy environment.
4. TPU will provide environmental leadership as a primary stakeholder in policies dealing with water, energy, transportation or land use with a goal of restoring and preserving ecosystem health for future generations.
5. TPU encourages employee innovation to accomplish their work in ways that reduce and mitigate environmental impacts.

6. TPU believes that Tribal governments are partners in the restoration and stewardship of our natural resources.

Outcomes

1. Business affairs and operations are conducted in a manner that promotes principles of stewardship and achieves a restorative environmental effect. This includes incorporating reduction of waste, greenhouse gas emissions and pollution as core elements of continuous improvement.
2. Ecological protection on our land is prioritized as a guarantee of future power and water services, and our commitment to the restoration of fish, wildlife and their habitats.
3. A sense of stewardship is instilled in our workforce and community through communication strategies and actions. —
4. Programs that complement and encourage National, State, and Regional environmental policies and initiatives are proactively developed and implemented.

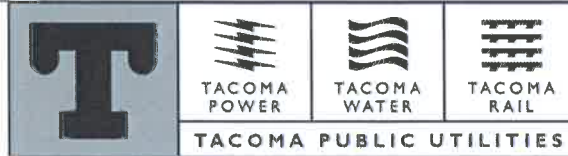
Measurement

1. Track progress on related Tacoma Environmental Action Plan and participate in City's Greenhouse Gas Inventory.
2. Adherence to Watershed Management Plan
3. Adherence on Electric Transportation Plan
4. Adherence to environmental measures within our FERC licenses.
5. Environmental leadership will be reflected in legislative priorities.
6. Track community outreach and communication activities related to environmental leadership.
7. Customer survey results regarding environmental leadership.

Reporting

Frequency: Annually

Reporting Method: An annual TPU environmental report that encompasses each measurement will be presented to the Public Utility Board.



PUBLIC UTILITY BOARD POLICY

Category: Strategic Directive Date of Adoption: January 8, 2020 Resolution No.: Revision Date:	Title: INNOVATION Policy Number: SD-6
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I. Purpose

Tacoma Public Utilities faces complex challenges including aging infrastructure, shifting workforce dynamics, uncertain sources of supply, changing regulatory requirements, dynamically changing markets and rising customer expectations. TPU is committed to fostering a culture of innovation to meet these challenges today and into the future. Innovation refers to fresh thinking that creates value for customers, including:

- Improved processes, policies and ways of doing business
- New or enhanced products and services
- New technologies and infrastructure

An innovative culture will enable an environment of creativity, experimentation and incubation to achieve new approaches to serve our customers, manage assets, finance investments and realize superior utility performance with the added benefit of enhancing sustainability.

II. Values

1. TPU will strive to become a driver for utility innovation and not just a consumer of innovative products. We support our employees' freedom to pursue innovative processes, procedures, products, programs, and operational technologies that provide value propositions for our customers and communities in order for TPU to remain competitive long term.
2. The Public Utility Board and senior management encourage measured risk taking while balancing opportunity and benefits to ensure that new ideas are pursued with strict discipline through analysis, sound technical data and good management oversight.

3. The Public Utility Board encourages highly collaborative projects and initiatives including those with external agencies, experts, academic institutions, and corporations to support the development of innovative solutions.
4. TPU believes stakeholder engagement is essential to the development of sustainable products and services. TPU will incorporate customer feedback when appropriate into the design and development of new ideas or projects through research and outreach to ensure solutions address needs.

III. Outcomes

1. Employees are empowered to surface new ideas or propose new solutions that positively impact how we operate and deliver services.
2. Development of innovative solutions is supported with financial resource investment including providing space within the daily activities of staff and the engagement of subject matter experts.
3. Innovation is supported through formal organizational structures. These may or may not be permanent teams, and shall be made up of employees from relevant work areas that work collaboratively on strategic initiatives with leadership oversight.
4. Innovative ideas and progress are regularly recognized and rewarded.
5. Innovative efforts include engaging stakeholders at the appropriate time in the development process, enabling broad participation while leveraging internal professional resources to help guide development and implementation of new ideas.
6. A safe environment exists for testing progressively mature, innovative concepts that have potential to enhance our customers' lives and how we perform our work. New ideas are regularly tested and evaluated in a scaled and relevant manner. We support further development of concepts that work well, and have the courage to modify or eliminate ones that are not meeting their intended outcome.

IV. Measurement

1. Assess TPU Innovation Culture and identify barriers to innovation.
2. Report to the Utility Board on organizational work groups who are focused on innovation, research and development, modernization projects, etc.
3. Ability to meet current and future challenges with innovative solutions and internal resources.
4. Individual work groups track and report progress.

5. Agree on simple metrics that can be tracked and reported. These metrics should map directly to an established value profile.

V. Reporting

Frequency: Annually

Reporting Method: To Be Developed.



PUBLIC UTILITY BOARD POLICY

Category: Strategic Directive	Title: Environmental Leadership
Date of Adoption: January 8, 2020	Policy Number: SD-5
Revision Date:	Resolution No. U-11131

Purpose

Tacoma Public Utilities is committed to being stewards of the region's bountiful natural resources, and a leader in the preservation, protection, and restoration of those resources while maintaining our excellent delivery of services. It is clear that in order to ensure we fulfill our operational duties into the future we must balance our resource usage with the health of our environment.

Values

1. TPU Board joins the Tacoma City Council in supporting Council Resolution 39427, the Environmental Action Plan, and prioritizing strategies and actions for improving environmental quality. Specifically, TPU:
 - a. Will achieve exceptional quality of life for every generation and will leave a legacy of stewardship; and
 - b. Will achieve lasting and equitable prosperity; build a safe, healthy, attractive, and vibrant community; and minimize negative impacts in order to conserve the natural resources that sustain it.
2. TPU believes climate change impacts how we provide services now and will, if unabated, continue to bring instability and negative impacts to our community's quality of life in the future. Efforts should go beyond mitigation and focus on policies to reduce atmospheric carbon.
3. TPU believes quality of life and long-term economic prosperity are contingent on a healthy environment.
4. TPU will provide environmental leadership as a primary stakeholder in policies dealing with water, energy, transportation or land use with a goal of restoring and preserving ecosystem health for future generations.
5. TPU encourages employee innovation to accomplish their work in ways that reduce and mitigate environmental impacts.
6. TPU believes that Tribal governments are partners in the restoration and stewardship of our natural resources.

6. TPU believes that Tribal governments are partners in the restoration and stewardship of our natural resources.

Outcomes

1. Business affairs and operations are conducted in a manner that promotes principles of stewardship and achieves a restorative environmental effect. This includes incorporating reduction of waste, greenhouse gas emissions and pollution as core elements of continuous improvement.
2. Ecological protection on our land is prioritized as a guarantee of future power and water services, and our commitment to the restoration of fish, wildlife and their habitats.
3. A sense of stewardship is instilled in our workforce and community through communication strategies and actions. —
4. Programs that complement and encourage National, State, and Regional environmental policies and initiatives are proactively developed and implemented.

Measurement

1. Track progress on related Tacoma Environmental Action Plan and participate in City's Greenhouse Gas Inventory.
2. Adherence to Watershed Management Plan
3. Adherence on Electric Transportation Plan
4. Adherence to environmental measures within our FERC licenses.
5. Environmental leadership will be reflected in legislative priorities.
6. Track community outreach and communication activities related to environmental leadership.
7. Customer survey results regarding environmental leadership.

Reporting

Frequency: Annually

Reporting Method: An annual TPU environmental report that encompasses each measurement will be presented to the Public Utility Board.



PUBLIC UTILITY BOARD POLICY

Category: Strategic Directive	Title: INNOVATION
Date of Adoption: January 8, 2020	Policy Number: SD-6
Revision Date:	Resolution No.: U-11131

I. Purpose

Tacoma Public Utilities faces complex challenges including aging infrastructure, shifting workforce dynamics, uncertain sources of supply, changing regulatory requirements, dynamically changing markets and rising customer expectations. TPU is committed to fostering a culture of innovation to meet these challenges today and into the future. Innovation refers to fresh thinking that creates value for customers, including:

- Improved processes, policies and ways of doing business
- New or enhanced products and services
- New technologies and infrastructure

An innovative culture will enable an environment of creativity, experimentation and incubation to achieve new approaches to serve our customers, manage assets, finance investments and realize superior utility performance with the added benefit of enhancing sustainability.

II. Values

1. TPU will strive to become a driver for utility innovation and not just a consumer of innovative products. We support our employees' freedom to pursue innovative processes, procedures, products, programs, and operational technologies that provide value propositions for our customers and communities in order for TPU to remain competitive long term.
2. The Public Utility Board and senior management encourage measured risk taking while balancing opportunity and benefits to ensure that new ideas are pursued with strict discipline through analysis, sound technical data and good management oversight.
3. The Public Utility Board encourages highly collaborative projects and initiatives including those with external agencies, experts, academic institutions, and corporations to support the development of innovative solutions.

4. TPU believes stakeholder engagement is essential to the development of sustainable products and services. TPU will incorporate customer feedback when appropriate into the design and development of new ideas or projects through research and outreach to ensure solutions address needs.

III. Outcomes

1. Employees are empowered to surface new ideas or propose new solutions that positively impact how we operate and deliver services.
2. Development of innovative solutions is supported with financial resource investment including providing space within the daily activities of staff and the engagement of subject matter experts.
3. Innovation is supported through formal organizational structures. These may or may not be permanent teams, and shall be made up of employees from relevant work areas that work collaboratively on strategic initiatives with leadership oversight.
4. Innovative ideas and progress are regularly recognized and rewarded.
5. Innovative efforts include engaging stakeholders at the appropriate time in the development process, enabling broad participation while leveraging internal professional resources to help guide development and implementation of new ideas.
6. A safe environment exists for testing progressively mature, innovative concepts that have potential to enhance our customers' lives and how we perform our work. New ideas are regularly tested and evaluated in a scaled and relevant manner. We support further development of concepts that work well, and have the courage to modify or eliminate ones that are not meeting their intended outcome.

IV. Measurement

1. Assess TPU Innovation Culture and identify barriers to innovation.
2. Report to the Utility Board on organizational work groups who are focused on innovation, research and development, modernization projects, etc.
3. Ability to meet current and future challenges with innovative solutions and internal resources.
4. Individual work groups track and report progress.
5. Agree on simple metrics that can be tracked and reported. These metrics should map directly to an established value profile.

V. Reporting

Frequency: Annually

Reporting Method: To Be Developed.



RESOLUTION NO. U-11132

1 A RESOLUTION adopting Public Utility Board's Board-Director Linkage
2 policies.

3 WHEREAS in response to changes in the utility industry, and to ensure
4 that Tacoma Public Utilities (TPU) continues to meet the Tacoma Public Utility
5 Board's goals of delivering affordable, reliable, and environmentally sensitive
6 services, the Board is developing policies concerning Government Processes,
7 Board-Director Linkage, and Strategic Directives, and
8

9 WHEREAS the Board-Director Linkage ("BL") policies clarify how the
10 Board expects the Director of Utilities to carry out the work of TPU, and

11 WHEREAS BL1 outlines expectations of the Board, such as monitoring
12 and measuring the results of the Strategic Directives, and ensuring that
13 decisions are in alignment with the City Charter, City Code, Board policies, and
14 applicable law, and
15

16 WHEREAS in addition, BL 1 also outlines expectations of the Director
17 such as: communicating regularly and effectively with the Board on the
18 business of TPU; managing the implementation of systems and policies that
19 enable TPU to conduct its activities both lawfully and ethically; leading the
20 implementation of TPU's vision, mission, and strategy; managing all operations
21 and business affairs of TPU with a primary focus on leadership of the TPU
22 executive management team to implement TPU strategic directives; and
23 preparing and submitting the TPU operating divisions strategic plans to the
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Board for review and approval to ensure all TPU expenditures are within the
1 authorized biennial budget, and

2 WHEREAS BL 2 clarifies that the Board directs the Director of Utilities
3 through written policies that define the results that the organization is to
4 achieve, and that are consistent with the delegations of authority that the Board
5 has previously made to the Director, and

7 WHEREAS BL 2 also clarifies that the Director's actions shall be
8 consistent with the delegations of the Board, and that the Director's Office will
9 develop and maintain an up-to-date list of delegations that have been made by
10 the Board to the Director, and that the Board will review the Board delegations
11 that have been made to the Director as necessary, and

13 WHEREAS these policies were developed at regularly-scheduled Board
14 study sessions and/or properly-noticed public meetings and all future Board
15 reviews and amendments will be handled similarly, and

17 WHEREAS the Board has committed to monitor and ensure compliance
18 with Board policies. This oversight provides an opportunity for the Board and
19 staff to clarify, revise and develop new policies when necessary as TPU
20 navigates changes in the utility industry, and

22 WHEREAS the Board and Director have determined that adopting the
23 Public Utility Board's Board-Director Linkage policies is in the best interests of
24 Tacoma Public Utilities and the ratepayers; Now, Therefore,

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1 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

2 That Public Utility Board's Board-Director Linkage policies, in the form as
3 on file with the Clerk, are adopted and approved.

4 Approved as to form:

5 _____
Chair

6 _____
7 Chief Deputy City Attorney

_____ Secretary

8 _____
Clerk

Adopted _____



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
FROM: Tom Morrill, Chief Deputy City Attorney
Charleen Jacobs, Executive Assistant and Clerk of the Board
MEETING DATE: January 8, 2020
DATE: December 17, 2019

SUMMARY: A resolution adopting Public Utility Board's Board-Director Linkage (BL) policies

BACKGROUND: It is a time of monumental change in the utility industry. Utilities must embrace innovation and move quickly to find new and better ways to deliver affordable, reliable, and environmentally sensitive services to their customers. With this in mind, the Tacoma Public Utility Board launched a process to develop policies concerning Government Processes, Board-Director Linkage, and Strategic Directives.

The BL policies clarify how the Board expects the Director of Utilities to carry out the work of TPU. BL1 outlines expectations of the Board, such as monitoring and measuring the results of the Strategic Directives, and ensuring decisions are in alignment with the City Charter, City Code, Board policies, and law. BL1 also outlines expectations of the Director, such as communicating regularly and effectively with the Board on the business of TPU, managing the implementation of systems and policies that enable TPU to conduct its activities both lawfully and ethically, leading the implementation of TPU's vision, mission, and strategy, manage all operations and business affairs of TPU with a primary focus on leadership of the TPU executive management team to implement TPU strategic directives, and preparing and submitting the TPU operating divisions strategic plans to the Board for review and approval to ensure all TPU expenditures are within the authorized biennial budget. BL2 clarifies that the Board directs the Director of Utilities through written policies that define the results that the organization is to achieve and which are consistent with the delegation of authority that the Board has previously made to the Director. In addition, the Director's actions shall be consistent with delegations of the Board. The Director's office develops and maintains an up to date list of delegations that have been made by the Board to the Director and the Board will review the Board delegations that have been made to the Director as necessary.

These policies were developed at regularly scheduled Board study sessions and all future reviews and amendments to the Public Utility Board policies will be in handled similarly.

The Public Utility Board has committed to monitor and ensure compliance with Board policies. This oversight provides an opportunity for the Board and staff to clarify, revise and develop new policy when necessary as TPU navigates changes in the utility industry.



Board Action Memorandum

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? N/A

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? N/A

ATTACHMENTS: Board-Director Relationship (BL1); Delegations to the Director of Utilities (BL2)

CONTACT: Jackie Flowers, Director of Utilities



PUBLIC UTILITY BOARD POLICY

Category: Board-Director Linkage Date of Adoption: January 8, 2020 Revision Date: Resolution No.: U-11132	Title: Board-Director Relationship Policy Number: BL - 1
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For the purposes of this policy:

The Board shall:

1. Approve the vision and mission of Tacoma Public Utilities (TPU) and establish the strategic directives TPU is to achieve, communicating them in the form of policy.
2. Monitor and measure the results of the Strategic Directives (SD).
3. Ensure decisions are in alignment with the City Charter, City Code, Board policies, and laws.
4. Appoint, evaluate, decide whether to reconfirm and, when necessary, discharge the Director of Utilities.
5. For purposes of inquiry, seek information from staff consistent with section 4.19 of the City Charter and should funnel such requests through the Director of Utilities or members of the senior leadership team.
6. Approve all attorneys from the City Attorney's Office assigned to act as counsel to TPU.

The Director of Utilities shall:

1. Lead the implementation of TPU's vision, mission, and strategy.
2. Manage all operations and business affairs of TPU, with a primary focus on leadership of the TPU executive management team to implement TPU strategic directives.
3. Communicate regularly and effectively with the Board on the business of TPU.
4. Manage the implementation of systems and policies that enable TPU to conduct its activities both lawfully and ethically.
5. Prepare and submit the TPU operating divisions strategic plans to the Board for review and approval and ensure all TPU expenditures are within the authorized biennial budget.
6. Appoint, subject to confirmation by the Board, a Superintendent for each utility system under the Director's control.
7. Conduct a thorough on-boarding process and orientation for new Board Members.

Director Evaluation:

1. The Board shall review the Director's performance annually, and every two years shall vote in a public meeting on whether to reconfirm the appointment, subject to reconfirmation by the City Council.¹
2. The Director's evaluation will be based on comparing the organization's performance and the Director's personal performance to the desired results established by the Board. The Board will use data as appropriate to determine the degree to which Board policies are being met.
3. Through the strategic planning process, the Director shall propose a performance scorecard and key accountabilities for the following year that represent the Director's reasonable interpretation of achieving the strategic directives defined by the Board.
4. All policies that instruct the Director shall be monitored at a frequency and by methods chosen by the Board.
5. The Board will receive regular progress updates on goals set in the performance review.
6. A timeline will be established by the Board and Director for the annual review and for the two-year confirmation review and decision.

¹ City Charter Section 4.18



PUBLIC UTILITY BOARD POLICY

Category: **Board-Director Linkage**

Date of Adoption: **January 8, 2020**

Revision Date:

Resolution No.: **U-11132**

Title: **Delegations to the Director of Utilities**

Policy Number: **BL - 2**

The Board will instruct the Director of Utilities (Director) through written policies that define the results that the organization is to achieve and which are consistent with the delegation of authority that the Board has previously made to the Director.

Specifically:

1. The Board shall approve the vision and mission of Tacoma Public Utilities (TPU) and establish the strategic directives of TPU, communicating them in the form of policies that are consistent with the delegations the Board has made to the Director with regard to the Director's authority.
2. The Director shall establish policies, make decisions, take actions, establish practices, and develop activities related to the operations or business affairs of TPU in a manner consistent with delegations of the Board.
3. If the Director reasonably determines that an activity related to a delegation presents an operational risk to TPU in any way, the Director shall inform the Board and may request that the Board take appropriate actions.
4. The Board may change its delegations to the Director at any time, subject to the conditions of the employment contract, thereby expanding or limiting the authority of the Director. However, as long as any particular delegation is in place, the Board will abide by the Director's decisions in those areas that are delegated to the Director.
5. The Director shall work with the Clerk of the Board to develop and maintain an up to date list of delegations that have been made by the Board to the Director.
6. The Board will review the Board delegations that have been made to the Director as necessary.



RESOLUTION NO. U-11133

1 A RESOLUTION adopting Public Utility Board Governance Process ("GP")
2 Policies.

3 WHEREAS in response to changes in the utility industry, and to ensure
4 that Tacoma Public Utilities (TPU) continues to meet the Tacoma Public Utility
5 Board's goals of delivering affordable, reliable, and environmentally sensitive
6 services, the Board is developing policies concerning Government Processes,
7 Board-Director Linkage, and Strategic Directives, and
8

9 WHEREAS the eleven (11) Government Process ("GP") policies are
10 principles for how the Board will govern itself:

11 GP1) TPU Board Purpose, Authority, Duties, and Expectations;

12 GP2) Meetings;

13 GP3) Election of Officers;

14 GP4) Duties of Officers;

15 GP5) Designation and Duties of the Clerk of the Board;

16 GP6) Conduct of Members During Meetings;

17 GP7) Conduct of Public;

18 GP8) Order of Business;

19 GP9) Motions and Precedence;

20 GP10) Resolutions and Motions; and

21 GP11) Miscellaneous.
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1 WHEREAS these policies were developed at regularly-scheduled Board
2 study sessions and/or properly-noticed public meetings and all future Board
3 reviews and amendments will be handled similarly, and
4

5 WHEREAS the Board has committed to monitor and ensure compliance
6 with Board policies. This oversight provides an opportunity for the Board and
7 staff to clarify, revise and develop new policies when necessary as TPU
8 navigates changes in the utility industry, and
9

10 WHEREAS the Board and Director have determined that adopting the
11 Governance Process Policies are in the best interests of Tacoma Public Utilities
12 and the ratepayers; Now, Therefore,

13 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

14 That the eleven (11) Public Utility Board Governance Process (GP)
15 Policies, in the form as on file with the Clerk, are adopted and approved.
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17 Approved as to form:

Chair

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19 _____
Chief Deputy City Attorney

Secretary

20 _____
21 Clerk

Adopted _____
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Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
FROM: Tom Morrill, Chief Deputy City Attorney
Charleen Jacobs, Executive Assistant and Clerk of the Board
MEETING DATE: January 8, 2020 (first consideration) and January 22, 2020 (second consideration)
DATE: December 17, 2019

SUMMARY: A resolution adopting Public Utility Board Governance Process (GP) Policies

BACKGROUND: The Tacoma Public Utility Board recently launched a process to develop policies concerning Government Processes, Board-Director Linkage, and Strategic Directives.

This resolution adopts Government Process policies. The GPs are principles for how the Board will govern itself. There are eleven (11) policies that cover: GP1) TPU Board Purpose, Authority, Duties, and Expectations; GP2) Meetings; GP3) Election of Officers; GP4) Duties of Officers; GP5) Designation and Duties of the Clerk of the Board; GP6) Conduct of Members During Meetings; GP7) Conduct of Public; GP8) Order of Business; GP9) Motions and Precedence; GP10) Resolutions and Motions; and GP11) Miscellaneous.

These policies were developed at regularly scheduled Board study sessions and all future reviews and amendments to the Public Utility Board policies will be in handled similarly.

The Public Utility Board has committed to monitor and ensure compliance with Board policies. This oversight provides an opportunity for the Board and staff to clarify, revise and develop new policy when necessary as TPU navigates changes in the utility industry.

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? N/A

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? N/A

ATTACHMENTS: GPs 1 - 11

CONTACT: Jackie Flowers, Director of Utilities



PUBLIC UTILITY BOARD POLICY

Category: **Governance Process**

Date of Adoption: **January 22, 2020**

Resolution No.: **U-11133**

Revision Date:

Title: **TPU BOARD PURPOSE, AUTHORITY, DUTIES, AND EXPECTATIONS**

Policy Number: **GP-1**

Appointed by the Mayor and the City Council of Tacoma, the Board has the following purpose, authorities, and duties, as set forth in Section 4.9 through 4.18 in the Tacoma City Charter.

As provided in Section 4.9, it is recognized that Board Members serve as volunteers without any compensation except for reimbursement of expenses as provided in the Tacoma City Charter.

Section 4.10 – The Public Utility Board, subject only to the limitations imposed by this charter and the laws of this state, shall have full power to construct, condemn and purchase, acquire, add to, maintain, and operate the electric, water, and belt line railway utility systems.

Section 4.11 – All matters relating to system expansion and the making of additions and betterments thereto or extensions thereof, the incurring of indebtedness, the issuance of bonds, and the fixing of rates and charges for utility services under the jurisdiction of the Board shall be initiated by the Board, subject to approval by the Council, and executed by the Board; provided, that all rates and charges for utility services shall be reviewed and revised or reenacted by the Board and Council at intervals not exceeding five years and beginning with the year 1954.

Section 4.12 – The Board shall submit an annual budget to the Council for approval, in the manner prescribed by state law.

Section 4.13 – The Board shall select from its own membership a chair, vice-chair, and secretary and shall determine its own rules and order of business. The time and place of all meetings shall be publicly announced, and all meetings shall be open to the public and a permanent record of proceedings maintained.

Section 4.14 – The Board shall maintain such billing, cost and general accounting records as maybe necessary for effective utility management or required by state law. Expenditure documents shall be subject to pre-audit by the central fiscal agency of City government. The City Treasurer shall be responsible for receipt, custody, and

disbursement of all utility funds. The Board shall submit such financial and other reports as may be required by the Council.

Section 4.15 – The Board shall have authority to secure the services of consulting engineers, accountants, special counsel, and other experts. At intervals not exceeding ten years the Council shall, at the expense of the utilities involved, cause a general management survey to be made of all utilities under the jurisdiction of the board by a competent management consulting or industrial engineering firm, the report and recommendations of which shall be made public; provided, that the first such survey shall be made within three years of the effective date of this charter.

Section 4.16 – Insofar as is permitted by state law, the Board shall have the same authority, and be governed by the same limitations, in respect to the purchase of materials, supplies, and equipment and awarding of contracts for all improvements for Department of Public Utilities' purposes as does the Council and City Manager for general government purposes.

Section 4.17 – The Department of Public Utilities shall use the services of the City's General Government finance department, purchasing agent, law department, human resources/personnel department, and other City departments, offices, and agencies, except as otherwise directed by the City Council.

Section 4.18 of the Tacoma City Charter provides that the Board shall appoint, subject to confirmation by the City Council, a Director of Utilities and shall review the Director's performance annually, and every two years shall, by an affirmative vote of at least three members of the Board in a public meeting, vote on whether to reconfirm the appointment, subject to reconfirmation by the City Council.

Duties and Expectations of Board Members include:

1. Regular attendance at scheduled study sessions and Board meetings.
2. Oversee development of and vote on policies, rates, budgets, and debt issues presented to the Board for consideration.
3. Vote on contracts and purchases as required by TMC 1.06.
4. Seeking to understand the viewpoints and values of citizens and customers, and other interested stakeholders. Serving as ambassadors for TPU and building relationships throughout TPU's service territory.
5. Consulting regularly with the City Council members to seek their input and keep them informed about TPU.
6. Developing and adopting high-level Strategic Directive policies that define the results the Board wants TPU to achieve and related performance measures. Monitoring the Strategic Directives regularly, on the timetable specified in each policy, and communicating to the Director of Utilities whether the Board finds TPU to be in

compliance. For the purpose of this policy, compliance is defined as substantially meeting the requirements of the Strategic Directive

7. Producing, maintaining, and monitoring other written policies that ensure high quality of governance and clear roles in decision-making between Board and staff.



PUBLIC UTILITY BOARD POLICY

Category: **Governance Process**

Title: **Meetings**

Date of Adoption: **January 22, 2020**

Policy Number: **GP-2**

Resolution No.: **U-11133**

Revision Date:

1. The regular meetings of the Board shall be held at 6:30 p.m. on the 2nd and 4th Wednesdays of each month, except when such a meeting date falls on a legal holiday or on the day preceding a legal holiday, in which case the meeting shall be held at a date and time as publicly announced by the Board Chair at the meeting prior to such conflict. There will only be one Board meeting in November and December which will be scheduled and noticed by the Clerk of the Board. All Board regular meetings shall be preceded by a Study Session commencing at 3:00 p.m. on the same day as the regular Board Meeting commences.
2. The time of any regular meeting may be changed by the Board by appropriate motion adopted at the meeting preceding such meeting so changed. In the event unforeseen conditions make a future regular meeting date not feasible because of an anticipated lack of quorum, or in order to better accommodate the public interest, such regular meeting may be rescheduled by the Chair of the Board or the Director of Utilities for either the next regular meeting time and date or for such special meeting time and date as is otherwise authorized by these rules.
3. The Board by majority vote may recess a meeting to a time specified in the motion therefore.
4. All meetings shall be held in the Department of Public Utilities' Administration Building, City of Tacoma, unless another place is specified by public announcement appropriately given.
5. Three members of the Board shall constitute a quorum for the transaction of business. In the absence of a quorum, the members present may adjourn the meeting to a later date.
6. An affirmative vote of not less than three members shall be necessary for the adoption of any main motion or resolution by the Board.

7. Special meetings of the Board shall be called by the Clerk of the Board, at the request of the Chair or any three Board Members, or by the Director of Utilities, by notice in writing of not less than 24 hours to each Board Member and to the local news media as required by RCW 42.30.080 (or as may be amended). Such notice shall state the subject of subjects to be considered, and no other subject shall be considered at such meeting. Notices for special meetings will be posted at least 24 hours in advance.
8. Remote Participation:
 - a. Board Members may attend regular meetings, special meetings, and study sessions remotely. This type of participation is enabled by use of one or more technology tools depending on the location of the meeting.
 - b. Two Board Members per meeting may attend remotely.
 - c. Board Members may attend remotely each type of meeting once per calendar quarter; provided, that this limitation shall not apply when a Board Member is absent for medical reasons.
 - d. Notice of remote attendance should be provided to the Board Clerk no less than twenty-four hours before the scheduled start time for the meeting. The Board Clerk or designee shall immediately advise the presiding officer of the proposed remote participation. If more than two Board Members wish to attend a meeting remotely, the first two Board Members to notify the Board Clerk shall be the ones permitted to attend remotely.
 - e. At any meeting where a Board Member is attending remotely, the Board Clerk or designee will coordinate with the appropriate technical staff to perform setup and testing of the technological tools to be used as necessary. The tool(s) used for this purpose must allow the voice of the Board Member participating remotely to be heard by everyone present in the meeting room, and must allow the Board Member to hear anyone speaking in the meeting room.
9. The Board will endeavor to hold a retreat annually.
10. Staff will strive to have Board agendas and meeting materials posted online for the public the Friday before the regular Board meetings held on the second and fourth Wednesdays of the month.



PUBLIC UTILITY BOARD POLICY

Category: **Governance Process**

Title: **Election of Officers**

Date of Adoption: **January 22, 2020**

Policy Number: **GP-3**

Resolution No.: **U-11133**

Revision Date:

ELECTION OF OFFICERS

1. The Chair, Vice-Chair, and Secretary of the Board shall be elected at the first regular meeting of July of each year to serve until the next annual election.
2. Whenever practicable the officers of the Board shall be selected according to the seniority of the members in their current appointments. The Chair should normally be the member who is in the fifth year of his/her current term, the Vice-Chair should be the member who is in the fourth year of his/her term or who has the second longest period of service on the Board, and the Secretary should be the member who is in the third year of his/her term or who has the third longest period of service on the Board. In the event of death or resignation of an officer, the other members should fill the vacancy according their length of service, and hold those offices so that the schedule set out above can be achieved.



PUBLIC UTILITY BOARD POLICY

Category: Governance Process Date of Adoption: January 22, 2020 Resolution No.: U-11133 Revision Date:	Title: Duties of Officers Policy Number: GP-4
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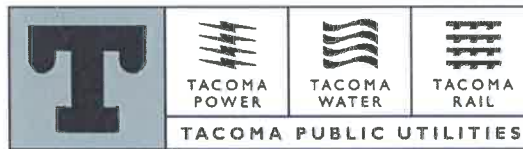
1. The presiding officer shall be the Chair, or in his/her absence the Vice-Chair, who shall conduct the business and deliberations of the Board under these rules. If both the Chair and Vice-Chair are absent and a quorum is present, the Secretary shall serve as presiding officer of the Board until the return of the Chair or Vice-Chair.

2. The presiding officer shall:
 - a. Preserve order and decorum in the meeting.
 - b. Decide all questions of order, subject to an appeal to the Board by another Board Member.
 - c. Recognize the members of the Board in the order in which they request recognition, and no member shall be recognized and permitted to speak on the same matter more than once until all other members of the Board have had an opportunity to be recognized and heard.
 - d. Observe and enforce all rules adopted by the Board.
 - e. Sign all resolutions adopted by the Board.

3. The presiding officer, as a member of the Board, shall have the same rights and be governed by the same rules as other Board Members.

3. The Secretary of the Board shall:
 - a. Work with the Clerk of the Board
 - b. Cause the proceedings of the Board's meetings to be entered in a permanent journal of its proceedings.
 - c. Certify the minutes of the Board's meetings and submit the same for approval to the Board prior to its next regular meeting.
 - d. Sign all resolutions adopted by the Board.

- e. Upon proper request certify copies of resolutions and other records of the Board and the Department, or delegate certification of such copies to the Clerk of the Board.
- 4. In the absence of the regular Secretary, the presiding officer may designate one of the other Board Members present as Acting Secretary for the purpose of any meeting.



PUBLIC UTILITY BOARD POLICY

Category: **Governance Process**

Date of Adoption: **January 22, 2020**

Resolution No.: **U-11133**

Revision Date:

Title: Designation and **Duties of the Clerk of the Board**

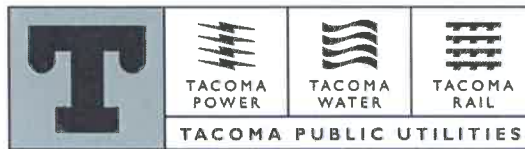
Policy Number: **GP-5**

DESIGNATION AND DUTIES OF THE CLERK OF THE BOARD¹

The Clerk of the Board shall be appointed by the Director of Utilities and work with the Board Chair and Secretary. Subject to the provisions of the Charter, State law, ordinances, and resolutions of the Board, the Clerk shall:

1. Be responsible for the publication, filing, indexing, and safekeeping of the records of all proceedings of the Board;
2. Record all resolutions and certified resolutions of the Board;
3. Prepare all legal notices involving the Department as provided by law or ordinance;
4. At the request of any Board Member, forthwith transmit any communication, material, or information to the other Board Members;
5. File and preserve all oaths of office and other documents not required to be filed elsewhere;
6. Perform other such duties as may be prescribed by the Charter, State law, ordinances, and the Board and keep a permanent journal of its proceedings provided.

¹ TMC 1.06.660



PUBLIC UTILITY BOARD POLICY

Category: **Governance Process**

Date of Adoption: **January 22, 2020**

Resolution No.: **U-11133**

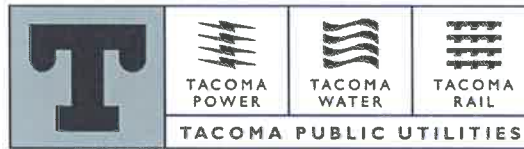
Revision Date:

Title: **Conduct of Members During Meetings**

Policy Number: **GP-6**

Report

1. Board Members desiring to speak shall first address and obtain recognition from the presiding officer.
2. No member shall carry on a private conversation during the deliberations of the Board, or leave his/her place while a question is being put.
3. No member, including the presiding officer, shall interrupt or argue with any other member while such member has the floor, except to call him/her to order.
4. No member in the discussion or debate of a matter or issue shall engage in or discuss or comment on the personalities of any other member or person, but shall confine his/her remarks to those facts which are germane and relevant to the question or matter under discussion.
5. If a member shall transgress these rules, the presiding officer shall, and any other member may, call him/her to order, in which case he/she shall be silent except to explain or continue in order.
6. The Board empowers the Director of Utilities, Chief Deputy City Attorney, and Clerk of the Board to enter Points of Order to support the presiding officer in ensuring compliance with the Board Rules of Order and parliamentary procedures.



PUBLIC UTILITY BOARD POLICY

Category: **Governance Process**

Title: **Conduct of Public**

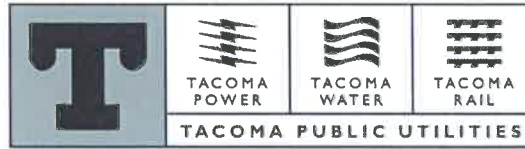
Date of Adoption: **January 22, 2020**

Policy Number: **GP-7**

Resolution No.: **U-11133**

Revision Date:

1. Tacoma Public Utilities (TPU) is committed to proactive engagement and open dialogue with customers and other stakeholders to understand their needs and improve service that informs decision-making while enhancing community understanding of TPU's operations, programs, and services.
2. Members of the public will have the opportunity to speak at each regular evening meeting of the Public Utility Board on items that are not on the agenda provided the comments are limited to subjects under the jurisdiction of the Board.
3. Members of the public will also have the opportunity at each regular evening meeting to make comments on agenda items being considered by the Board.
4. No member of the public shall engage in or discuss or comment on personalities or indulge in derogatory remarks, gestures, or insinuations with respect to any member of the Public Utility Board or any member of the staff, but at all times confine the remarks to the matters which are germane and relevant to the questions or matters under discussion.
5. Any members of the public who disrupts, or interferes with the orderly conduct of business by the Board or engages in threatening conduct by words, gestures, or actions may be excluded from the meeting room of the Board.



PUBLIC UTILITY BOARD POLICY

Category: **Governance Process**

Title: **Order of Business**

Date of Adoption: **January 22, 2020**

Policy Number: **GP-8**

Resolution No.: **U-11133**

Revision Date:

1. The regular order of business shall be as follows:
 - a. Call to order.
 - b. Roll call
 - c. Approval of minutes of previous meeting.
 - d. Recognition and Awards.
 - e. Comments by the Public.
 - f. Consideration of resolutions and motions on Consent Agenda and adoption thereof.
 - g. Consideration of resolutions and motions and votes thereon.
At the discretion of the Chair, general guidelines for the process shall be:
 - Motion
 - Staff Presentation
 - Board Questions
 - Public Comment
 - Board comments and follow-up questions
 - Votes
 - h. Unfinished business.
 - i. New business.
 - j. Communications.
 - k. Reports of the Director
 1. Summary of day's study session presentations
 2. Staff reports and updates at the request of the Board or discretion of the Director
 - l. Comments by Members of the Board.
 - m. Adjournment.

2. The Clerk shall prepare the business of each session in regular order, which order shall not be departed from except upon approval of a majority of the Board.
3. The Clerk shall include any proposed resolution or item on the agenda at the request of any member of the Board or the Director of Utilities.
4. In the event that there is no known business to consider or discuss for any business agenda item, the Clerk of the Board is authorized to delete said agenda item so that said agenda item will not appear on the published agenda for that session.



PUBLIC UTILITY BOARD POLICY

Category: **Governance Process**

Title: **Motions and Precedence**

Date of Adoption: **January 22, 2020**

Policy Number: **GP-9**

Resolution No.: **U-11133**

Revision Date:

1. When a question is under consideration, no motion shall be entertained except as follows, such motions have precedence in the following order:
 - a. To adjourn.
 - b. Recess.
 - c. The Previous Question (The "previous question" shall be as follows: "Shall the main question be put?" The "main question" shall be on the passage of a resolution or motion, but when amendments are pending, the question shall be taken first, upon such amendments in their order.
 - d. To Lay on the Table.
Each of the forgoing motions shall be decided without debate.
 - e. To Postpone to a Certain Time.
 - f. To Postpone Indefinitely.
 - g. Refer to Committee.
 - h. To Amend.
 - i. To Substitute.
2. The several motions to postpone shall preclude debate of the main question until decided.
3. No motion to reconsider a vote shall be in order unless it be made at the same or the following meeting and by a member who voted with the prevailing side. Provided, however, when a matter fails to pass due to a tie vote, (not counting an abstaining vote), any member may move to reconsider, at the same of the following meeting. A motion to reconsider having been put and lost shall not be renewed either by the mover or by any other member of the Board.
4. No rule shall be suspended except by three affirmative votes of Board Members. A motion to suspend a rule shall not be debatable.



PUBLIC UTILITY BOARD POLICY

Category: **Governance Process**

Title: **Resolutions and Motions**

Date of Adoption: **January 22, 2020**

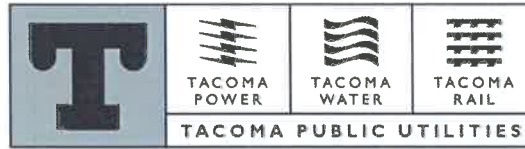
Policy Number: **GP-10**

Resolution No.: **U-11133**

Revision Date:

1. Proposed resolutions and motions shall be included on the agenda and presented to the Board at the request of any member or the Director of Utilities.
2. No resolution and/or motion shall be considered for adoption by the Board unless its adoption or passage shall have been first moved by a Board Member and seconded by another.
3. Motions and/or resolutions that are routine and will probably not involve Board Member questions may be placed on the Consent Agenda by the Clerk of the Board. Any Member of the Board or the Chairman may remove any motion or resolution from the Consent Agenda, and said matter may be considered separately after action is concluded on the Consent Agenda.
4. No resolution shall be considered for final passage until approved as to form and reviewed for legal correctness by the City Attorney or his/her representative.
5. Reading of resolutions and motions shall be deemed sufficient if a brief synopsis of purport is made by the Clerk, and the reading if full of the same shall not be required unless the reading of any particular resolution or motion or part thereof be requested by any Member of the Board.
6. A Board Member may move to amend any pending main motion or resolution. The motion to amend is made after the main motion is pending and the motion to amend should precisely state the amendment and where the amendment is to be inserted and/or take the place of wording in the pending motion or resolution. When practicable, a copy of the proposed amendment should be provided to all Board Members and staff in advance of the scheduled meeting.

7. A motion or resolution or substitute motion or substitute resolution that is not on the published meeting agenda, may be considered by the Board after first suspending the Rules of Order of Business so to allow consideration of said matter. After suspension of the Rules, the Chair requests the Clerk to read a brief synopsis of said motion/resolution and thereafter announces that "Resolution No. U____, Motion ____-____, or Substitute Resolution No. U____, Substitute Motion ____-____ is now on the agenda, is there a motion to adopt said matter." After an appropriate motion and second are made, discussion may take place, and the Board may fully consider the adoption of said new motion or resolution under the process normally used for motions and resolutions.



PUBLIC UTILITY BOARD POLICY

Category: **Governance Process**

Date of Adoption: **January 22, 2020**

Resolution No.: **U-11133**

Revision Date:

Title: **Miscellaneous**

Policy Number: **GP-11**

1. Amendments to these rules shall be by resolution, introduced to the Board at a regular meeting and laid over until the next regular meeting, then enacted only by an affirmative vote of at least three members.
2. On all questions of practice or procedure not provided for by these rules, the practice or procedure set forth in the most current edition of Robert's Rules of Order Newly Revised shall be used for guidance.



RESOLUTION NO. U-11134

1 A RESOLUTION related to granting a land use permit to WR Holdings, LLC
2 and Purdy Topsoil & Gravel, LLC.

3 WHEREAS the City of Tacoma, Department of Public Utilities, Light
4 Division (dba "Tacoma Power") requests approval to grant a standard form five
5 (5) year land use permit to WR Holdings, LLC, and Purdy Topsoil & Gravel, LLC
6 for their use of 165,000 square feet (3.78 acres) of the Potlatch transmission
7 right-of-way located in Purdy, WA, in conjunction with its business operation,
8 Purdy Topsoil & Gravel, which sells landscaping and construction materials to
9 the public, and
10

11 WHEREAS since 1989, for a fee, Tacoma Power has permitted the
12 operators of Purdy Topsoil & Gravel, to use a portion of its Potlatch
13 transmission right-of-way located in Purdy, WA, in conjunction with its business
14 operation, and
15

16 WHEREAS the current permit expires January 9, 2020, and Tacoma
17 Power desires to grant a new standard form permit for an additional five (5)
18 years, and
19

20 WHEREAS the annual use fee will be \$33,000, with 3% escalators,
21 which is based upon a market value analysis by Real Property Services and
22 approved by Tacoma Power, and

23 WHEREAS the permit form contains standard legal provisions, including
24 revocability with ninety (90) days' written notice, and indemnity and insurance
25 provisions to address liability, and
26



1 WHEREAS this matter is before the Board pursuant to Public Utility
2 Board Resolution No. U-10777, Section 7, which states, "in the event the
3 proposed use fee to be imposed exceeds \$25,000 annually, the underlying use
4 permit shall be brought before the Board for approval of the proposed use and
5 fee," and

6 WHEREAS Tacoma Power has reviewed the proposed permit and has
7 determined the fees to be reasonable and fair; Now, therefore,

8 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:
9

10 That the grant for a five (5) year land use permit to WR Holdings, LLC
11 and Purdy Topsoil & Gravel, LLC is approved, for a fee in the annual amount of
12 \$33,000, with 3% escalators, for their use of 165,000 feet (3.78 acres) of the
13 Potlatch transmission line right-of-way.

14 Approved as to form:

15 
16 Chief Deputy City Attorney

Chair

Secretary

17
18 Clerk

Adopted



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: Dori Bishop, Sr. Real Estate Specialist, Real Property Services
MEETING DATE: January 8, 2020
DATE: December 12, 2019

SUMMARY: Tacoma Power requests your approval to grant a standard form five (5) year land use permit to WR Holdings LLC and Purdy Topsoil & Gravel, LLC for their use of 165,000 square feet (3.78 acres) of the Potlatch transmission line right-of-way located in Purdy, WA in conjunction with its business operation, Purdy Topsoil & Gravel, which sells landscaping and construction materials to the public.

BACKGROUND:

Since 1989, for a fee, Tacoma Power has permitted the operators of Purdy Topsoil & Gravel, to use a portion of its Potlatch transmission line right-of-way located in Purdy, WA (just north of Gig Harbor city limits) in conjunction with its business operation. The current permit expires January 9, 2020 and Tacoma Power desires to grant a new standard form permit for an additional five (5) years.

The annual use fee will be \$33,000 with 3% annual escalators, which is based upon a market value analysis performed by Real Property Services and approved by Tacoma Power.

The permit form contains standard legal provisions, including revocability with ninety (90) days' written notice, indemnity and insurance provisions to address liability.

Pursuant to Resolution U-10777, adopted May 20, 2015, Section 7, states *"in the event the proposed use fee to be imposed exceeds \$25,000 annually, the underlying use permit shall be brought before the Board for approval of the proposed use and fee"*.

Tacoma Power staff has reviewed and approved the proposed five (5) year permit and determined the fees to be reasonable and fair.

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? No.

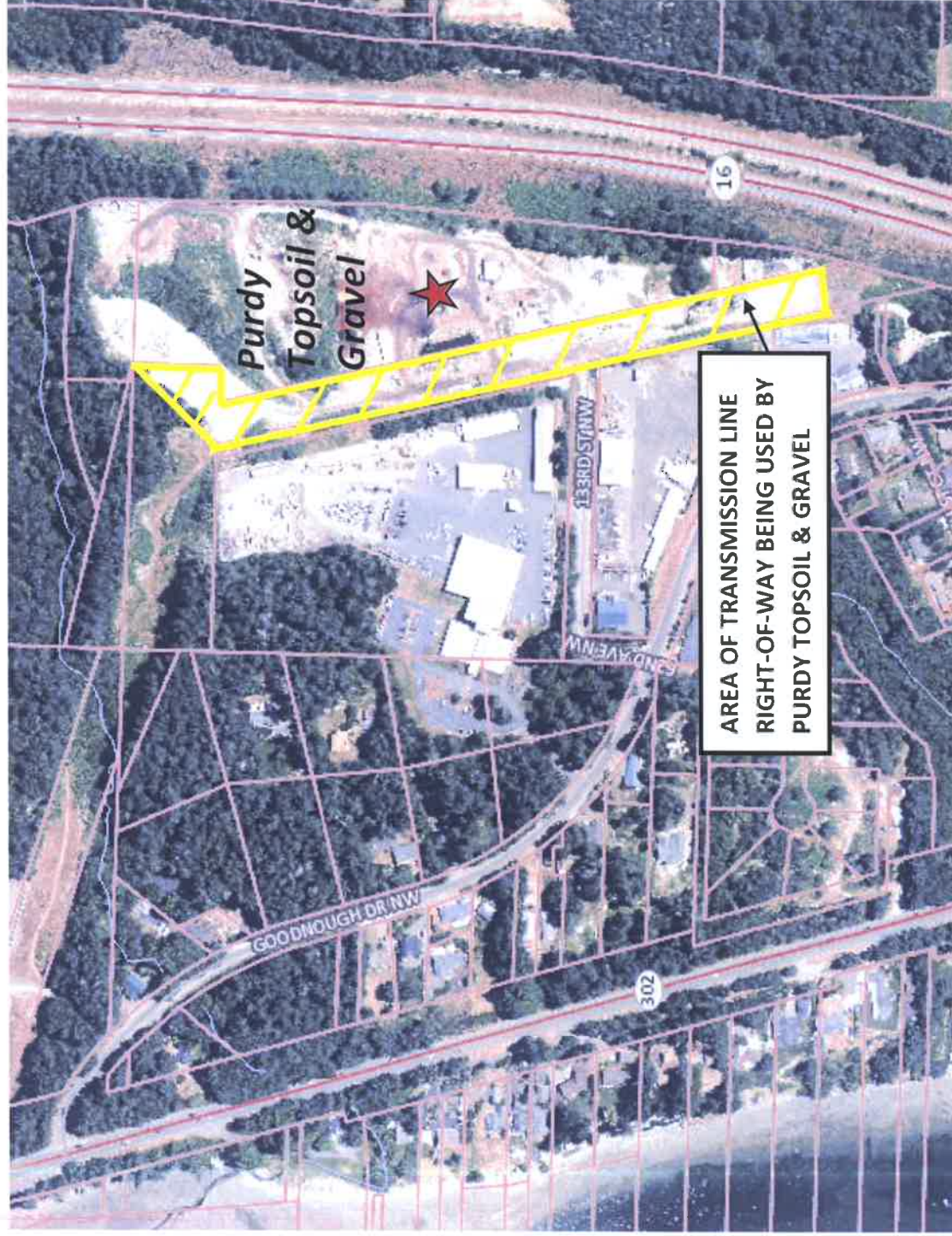
IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED. N/A.

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? No.

ATTACHMENTS: Tacoma Power Permit No. 2485 (new proposed permit); Tacoma Power Permit No. 2330 (current permit expiring 1/9/2020); Location Map

CONTACT: Primary Contact: Dori Bishop, Sr. Real Estate Specialist, Ext 8873
Supervisor: Dylan Harrison, Senior Real Estate Officer, Ext 8836

LOCATION MAP



WHEN RECORDED RETURN TO:
Tacoma Public Utilities
Real Property Services
PO Box 11007, Tacoma, WA 98411

**CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
PERMIT NO. 2485**

Reference No.:	P2019-234/P2485
Licensor:	City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power)
Licensee:	WR Holdings, LLC and Purdy Topsoil & Gravel, LLC
Legal Description:	Portion of the West half of the Southeast Quarter of Section 24, Township 22 North, Range 1 East, W.M
Tax Parcel No.(s):	Portion of 0122244011
County:	Pierce
Permit Expiration Date:	
Supersedes and Replaces:	This Permit supersedes and replaces Tacoma Power Permit No. 2330, recorded under Auditor's No. 201701200223

CONTACT INFORMATION

LICENSEE:

David G. Randles
WR Holdings, LLC and
Purdy Topsoil & Gravel, LLC
5802 192nd Street E
Puyallup, WA 98375
(253) 219-1803

LICENSOR:

Tacoma Public Utilities
Real Property Services
3628 South 35th Street
Tacoma, Washington 98409
(253) 396-3060

This Permit ("Permit") made and entered into on _____ ("Effective Date"), by and between the CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a. Tacoma Power), a municipal corporation, hereinafter referred to as "Licensor" and WR Holdings, LLC, a Washington limited liability company, and Purdy Topsoil & Gravel, LLC, a Washington limited liability company, hereinafter collectively referred to as "Licensee."

RECITALS

A. Licensors owns, operates, and maintains the Premises defined below as part of and in relation to its utility operations.

B. Licensee desires to use a specified portion of said Premises for the use specified in this Permit.

C. Licensors is willing to grant permission to Licensee to access and use a portion of its real property strictly for the use specified in this Permit and issue Licensee a real property license to use said real property per the terms and conditions specified in this Permit.

NOW THEREFORE, in consideration of the mutual promises contained in this Permit, the parties agree as follows:

1. LICENSE.

A. Grant of License / Description of Premises. Licensors grants to the Licensee limited, non-exclusive, revocable permission to use the following described Premises for the Permitted Use stated below subject to all the terms and conditions of this Permit:

A PORTION OF THAT CERTAIN TRACT OF LAND CONVEYED TO THE CITY OF TACOMA BY WARRANTY DEED DATED SEPTEMBER 6, 1923 AND RECORDED OCTOBER 22, 1923 UNDER PIERCE COUNTY AUDITOR'S FILE NO. 686747 DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 22 NORTH, RANGE 1 EAST, W.M.; THENCE RUNNING EAST 660 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 200 FEET; THENCE WEST 86.5 FEET; THENCE SOUTH 14°49' EAST, 1165 FEET MORE OR LESS TO THE SOUTH LINE OF SAID SUBDIVISION; THENCE WEST ALONG THE SAME 103.4 FEET; THENCE NORTH 14°49' WEST, 1185 FEET; THENCE NORTHEASTERLY TO THE POINT OF BEGINNING.

TOGETHER WITH A PORTION OF THAT CERTAIN TRACT OF LAND ACQUIRED BY THE CITY OF TACOMA BY JUDGMENT NO. 1 OF PIERCE COUNTY SUPERIOR COURT CAUSE NO. 51234 DATED JULY 30, 1923 RECORDS OF PIERCE COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

A STRIP OF LAND 100 FEET IN WIDTH LYING 50 FEET ON EACH SIDE OF A CENTERLINE LOCATED AS FOLLOWS: BEGINNING ON THE NORTH LINE OF THE NORTH 382.71 FEET OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 22 NORTH, RANGE 1 EAST, W.M.; AT A POINT 548 FEET DISTANT WEST OF THE NORTHEAST CORNER OF SAID SUBDIVISION; RUNNING THENCE SOUTH 14°49' EAST, 280 FEET BEING THE TERMINUS OF THIS DESCRIBED CENTERLINE. THE NORTHERLY END OF SAID STRIP BEING THE NORTH LINE OF SAID SUBDIVISION AND THE SOUTHERLY END OF SAID STRIP BEING PERPENDICULAR TO THE NORTH LINE OF SAID SUBDIVISION.

CONTAINING 165,000 SQ. FT. MORE OR LESS.

(hereinafter "Premises")

Map of Premises is attached to this Permit as Exhibit A.

B. Purpose.

i. Permitted Use. Licensor permits the Premises to be used by the Licensee, and Licensee's agents, contractors, employees, customers, guests, and invitees, only for the express purpose of:

- Ingress and egress
- Operation and maintenance of an existing customer and/or employee parking area
- Existing material storage
- Existing private utility lines and structures (power, storm sewer and water)
- Existing storm pond

(hereinafter "Permitted Use")

ii. No Other Use Is Permitted. Licensee may only use the Premises in strict accordance with this Permit. Licensee shall make no other use of the Premises or change or enlarge Licensee's use thereof without prior written approval of Licensor.

C. No Property Rights Are Granted. This Permit does not convey any right, title, or interest in real property or in the above described Premises. The permission granted by this Permit is a license in real property only.

D. CONDITION OF PREMISES. LICENSEE HAS INSPECTED THE PREMISES AND ACCEPTS IT IN ITS PRESENT CONDITION "AS-IS." LICENSOR EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE PREMISES ARE SUITABLE FOR THE PERMITTED USE.

E. Third Party Obligations. Licensee shall ensure that its agents, contractors, employees, customers, guests, and invitees shall comply with all the requirements, obligations, limitations, and restrictions of this Permit. The Permit and permissions granted herein are contingent upon Licensee and Licensee's agents, contractors, employees, customers, guests, and invitees complying with all the terms and conditions of this Permit.

F. Special Conditions. Special Conditions are attached to this Permit as Exhibit B "Special Conditions"

2. PERMIT PERIOD

A. Term. The term of this Permit and the permission and license granted herein shall be effective for a five (5) year period beginning on the Effective Date.

B. Permit Extension. Licensee may submit a term extension request and applicable fee to Licensor no later than ninety (90) days before the Permit terminates per Section 2.A. A mandatory site inspection will be required for all Permit term extensions. After receipt of the request and site inspection, Licensor may, in its sole discretion, increase the term of this Permit. Permit extensions will not be granted if any conditions have changed since the

original Permit was granted and/or any permitted structures or improvements are not in compliance with the terms and conditions of this Permit.

C. Permit Re-Issuance. In the event this Permit is terminated and Licensor thereafter grants a new Permit to Licensee, Licensee shall pay all fees owing to process a new permit.

3. FEES AND COSTS

A. Fees. Licensee shall pay all fees, deposits, and charges specified in and in accordance with Exhibit C "Land Use Permit Fees" attached.

B. Licensee Assumes all Costs. Licensee hereby expressly assumes liability and responsibility for all expenses and costs associated with this Permit and the Permitted Use.

C. Licensee to Pay Costs to Enforce Conditions of Permit. Licensee agrees to reimburse Licensor for any costs (including reasonable attorney's fees) that Licensor may incur in enforcing the terms and conditions of this Permit.

D. Licensee Liable for Damages. Licensee shall pay or reimburse Licensor for all damages to Licensor's property or the Premises resulting from the actions of Licensee or any of Licensee's agents, guests, or invitees.

E. Leasehold Excise Tax. In addition to the Land Use Permit Fees, Licensee shall pay Licensor:

- i. all leasehold excise tax (as required by RCW 82.29A in lieu of real property taxes) to the extent that any is determined to be due as a result of this Permit,
- ii. any surface water and other governmental charges and assessments (special and general) of every kind and nature levied or assessed against the Premises, and
- iii. any taxes levied or assessed in lieu of the foregoing, in whole or in part.

Leasehold excise tax is calculated by the State, and assessed against a variety of interests in real property, including, without limitation, permits, licenses and facility use agreements (none of which are leases) using a percentage multiplier of either the rent/use fee/permit fee/license fee required hereunder or an imputed fair market value of the same, and as a result, Licensee shall be responsible for any increases in leasehold excise tax that result from an increase in rent/use fee/permit fee/license fee for the Premises over the term hereof, or for increases due to an increase in the statutory rate during the term of this Permit. If Licensee provides Licensor with a proof of exemption from payment of leasehold excise tax issued by the Washington State Department of Revenue, then Licensee shall not be required to pay leasehold excise tax for the period that such exemption is effective. If the exemption is of limited duration, Licensee shall be required to obtain documented renewal of such exemption and provide such to Licensor in order to claim continued exemption under this Permit.

4. MAINTENANCE OF PREMISES AND IMPROVEMENTS

A. Maintenance Requirements. The Premises, including any improvements, structures,

facilities, and/or equipment will be maintained at the Licensee's sole cost, in a safe condition, in a clean and neat manner, and in accordance with the specifications of the Permit and attached Exhibits.

B. Assumption of Risk. Any improvements, facilities, or equipment allowed per this Permit on the Premises shall be subject to being damaged by Licensor's use or operations. Licensee assumes the risk of these limited use rights and will be responsible for the costs and expenses in restoring the Premises.

C. Maintenance Notice. Licensee shall notify Licensor four (4) weeks prior to scheduled maintenance of the Premises or improvements permitted by this Permit that could potentially interfere with Licensor's use of the Premises. The parties agree that if maintenance schedules result in a construction or use conflict, Licensor's schedule shall prevail. If emergency maintenance is required on Licensee's facilities, Licensee shall notify Licensor as soon as reasonably practical.

5. NO WARRANTY

Licensor does not warrant its authority to permit the above described Permitted Use and Licensee shall secure any other rights or permissions that are needed for Licensee's lawful use of the Premises.

6. PURPOSE AND CONTROL OF PREMISES

Licensor owns the Premises as part of its utility system and the Premises are necessary for the operation, maintenance, and improvement of its utility system facilities. Licensee therefore acknowledges that the primary purpose of the Premises is Licensor's operations. Thus, the permission granted by this Permit is subject and subordinate to Licensor's paramount rights and operations. Licensee shall not in any way interfere with Licensor's use of or operations on the Premises. Licensee shall not prohibit or in any way limit access to the Premises by any city, state, or federal regulatory agency, Licensor, or other party granted permission by Licensor to access and use the Premises. Licensor may, in its sole discretion, require Licensee to move or modify its use, operations, facilities, or structures at Licensee's expense. Further, Licensee, its agents, employees, or property is subject to the hazards of Licensor's utility operations, which Licensee hereby expressly assumes.

7. TEMPORARY EXCLUSIVE CONTROL

A. Exclusive Control. Licensor, in its sole discretion, may assert temporary exclusive control over the Premises, including temporarily excluding Licensee from the Premises, when exclusive control is needed for Licensor's operations.

B. Hold Harmless. Licensee agrees to hold Licensor harmless against any claims, demands or damages related to denial of access and use of the Premises.

8. PERMIT NON-EXCLUSIVE / SUBJECT TO REGULATION AND CITY OF TACOMA POLICY

A. Other Permits. This Permit is nonexclusive and shall not prohibit Licensor from granting

permits or licenses to the same Premises to others.

B. Other Agreements. The rights granted by this Permit shall be subject to any prior, concurrent, or subsequent agreements or contracts entered into or that may be entered into by Licensor or the City of Tacoma.

C. Regulation. Licensee shall obtain all applicable permits or approvals from federal, state, or local agencies prior to use of or construction on the Premises as allowed by this Permit. The Licensee shall give full cooperation to any federal, state, county, or local agencies having jurisdiction over the Premises or use of the Premises.

D. City of Tacoma Policy. Licensor and the City of Tacoma reserves the right to prescribe additional rules, policies, and regulations relating to the rights, use, and permission granted under this Permit. Licensor will endeavor to give sixty (60) days' notice to Licensee of any such additional rules, policies, and regulations.

9. SUPERVISION

Licensee shall give the conduct, operation, and maintenance of the Premises and Permitted Use its personal supervision and direction.

10. NUISANCES PROHIBITED

The Licensee will maintain the Premises in a clean, neat, and orderly manner and will not create or permit any nuisance to exist or allow the Premises to be used for any immoral or unlawful purposes.

11. NONLIABILITY

Licensor shall not be liable to the Licensee or to any third parties entering upon the Premises related to or in furtherance of any act or thing done in connection with the Permitted Use or other use of the Premises. Licensee, on behalf of itself and its employees, personnel, contractors, agents, invitees, or licensees expressly assumes all risks associated with the Permitted Use or other use of the Premises.

12. INDEMNIFICATION

Licensor shall in no way be liable or responsible for any injury or damage done or occasioned by the actions or operations of Licensee or Licensee's contractors, agents, employees, customers, guests, and invitees under this Permit, and Licensee binds and obligates itself to pay and satisfy any and all claims arising on account of its operations under this Permit. To the fullest extent allowed by law, the Licensee agrees to indemnify, defend and hold harmless the Licensor and the City of Tacoma, its officers and employees, from and against any and all claims for damages or loss to the Licensor's or the City of Tacoma's operations or property and from any and all claims or litigation arising in connection with this Permit and/or Licensee's use of the Premises. This includes damages to or loss of property and personal injury, including injury to or death of Licensee or Licensee's agents, contractors, employees, customers, guests, and invitees, which may be caused or occasioned by the existence, operation, use or maintenance of any and all of the property subject of this Permit or

associated with the license granted hereunder, or caused or occasioned by any act, deed or omission of the Licensee, Licensee's contractors, agents, employees, guests, customers or invitees.

In this regard, Licensee hereby waives immunity under Title 51 RCW, Industrial Insurance Laws, and acknowledges that this provision has been mutually negotiated. The Licensor and the City of Tacoma agrees to be responsible for its sole negligence or the sole negligence of its employees and officers occurring within the scope of their employment.

13. HAZARDOUS SUBSTANCES AND/OR CONDITIONS

A. No goods, merchandise or material shall be kept, stored or sold on the Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be conducted therein, thereon or therefrom other than as provided for in this Permit. No machinery or apparatus shall be used or operated on the Premises which will in any way injure the Premises; provided, however, that nothing in this paragraph shall preclude Licensee from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are necessary or customary in carrying out the authorized uses under this Permit.

B. In the event such uses include keeping or storing inflammable or explosive substances, such substances shall be stored in closed containers and shall be stored, used or dispensed in the manner prescribed by the regulations of Licensor or other public body having authority in the matter and, in any event, in the safest manner reasonably possible. Licensee shall be solely liable for the remediation of any Hazardous Substance and/or conditions on the Premises resulting from Licensee's use of Premises. "Hazardous Substance" means any substance which now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup.

14. INSPECTION

This Permit is a Real Property license and conveys no possessory interests whatsoever. Licensor may, therefore, enter the Premises at any time for any reason.

15. TERMINATION

A. Notice of Termination. This Permit may be terminated by the Licensee or Licensor upon ninety (90) days written notice, for any reason stated in said notice, mailed by certified mail to the Licensee at 5802 192nd Street East, Puyallup, WA 98375, OR to Licensor at PO Box 11007, Tacoma, Washington 98411.

B. Operational Necessity. In the event it should become necessary, as determined by Licensor in its sole discretion, for Licensor to make use of the Premises to such an extent as to necessitate discontinuance of the use thereof by the Licensee, Licensor may terminate this Permit by giving Licensee written notice of such termination at any time. Said notice to be given by certified mail addressed to Licensee at 5802 192nd Street East, Puyallup, WA 98375, and termination shall be effective IMMEDIATELY upon delivery thereof.

C. Insolvency/Bankruptcy. It is hereby agreed that if the Licensee becomes either insolvent or files a proceeding in bankruptcy, or if a receiver is appointed, Licensors may, upon giving ten (10) days' notice to the Licensee, cancel this Permit and Licensee shall cease the Permitted Use and vacate the Premises.

D. Vacation of Premises. Upon the termination of this Permit for any reason, the Licensee agrees to promptly and peaceably vacate the subject Premises and to return said Premises and any structures and/or improvements located on the Premises prior to the beginning date of this Permit to Licensors in as good condition as the same existed prior to the execution of this Permit, reasonable wear and tear excepted. If the Licensee's structures and/or improvements existed prior to this Permit, the Licensee shall return the Premises to the Licensors in a condition that is satisfactory to the Licensors. Satisfactory condition of the returned Premises shall be determined at the Licensors' sole discretion. Any damages to the subject Premises or to cultural resources on the Premises shall be repaired at Licensee's expense.

16. ASSIGNMENT

This Permit is non-assignable and non-transferable.

17. MISCELLANEOUS

A. Entire Agreement. This Permit constitutes the entire agreement and understanding of the parties and supersedes all discussions and other agreements between the parties. There are no representations or understandings of any kind not set forth herein. Notwithstanding anything to the contrary in this section, Licensors policies, regulations, and procedures will apply to and govern the terms and conditions and the permission granted by this Permit.

B. Amendments. Any amendments to this Permit must be in writing and executed by both Parties.

C. Governing Law. This Permit shall be construed in accordance with the laws of the State of Washington.

D. Enforceability. Parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

E. Exhibits. All Exhibits referred to herein or attached hereto are incorporated herein for all purposes.

F. Mutual Negotiation. Licensee acknowledges that this Permit has been mutually negotiated and any ambiguity regarding the terms and conditions herein shall not be construed or interpreted against Licensors as the drafter of this Permit.

G. Recording. This Permit or a memorandum hereof shall, at the Licensors' sole discretion, be recorded in any public office.

H. No Waiver. Failure of Licensor to insist on the performance of any of the terms and conditions of this Permit, or the waiver of any breach of any of the terms and conditions of this Permit, shall not be construed as waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

I. Section Headings. The titles to the sections and paragraphs of this Permit are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Permit.

J. Survival

The following sections will survive the termination of this Permit and remain enforceable against Licensee after termination:

Sections 2.C, 7, 12, 13, 15, 17.C and 17.D.

ACCEPTED:

Subject to the Terms and Conditions herein:

WR HOLDINGS, LLC

PURDY TOPSOIL & GRAVEL, LLC

David G. Randles, Managing Member

David G. Randles, Managing Member

Authorized by Public Utility Board Resolution No. _____, adopted _____.

APPROVED:

Chris Robinson Date
Power Superintendent

ACCEPTED:

Joseph Wilson
T & D Manager

REVIEWED:

John Nierenberg
T & D Assistant Manager

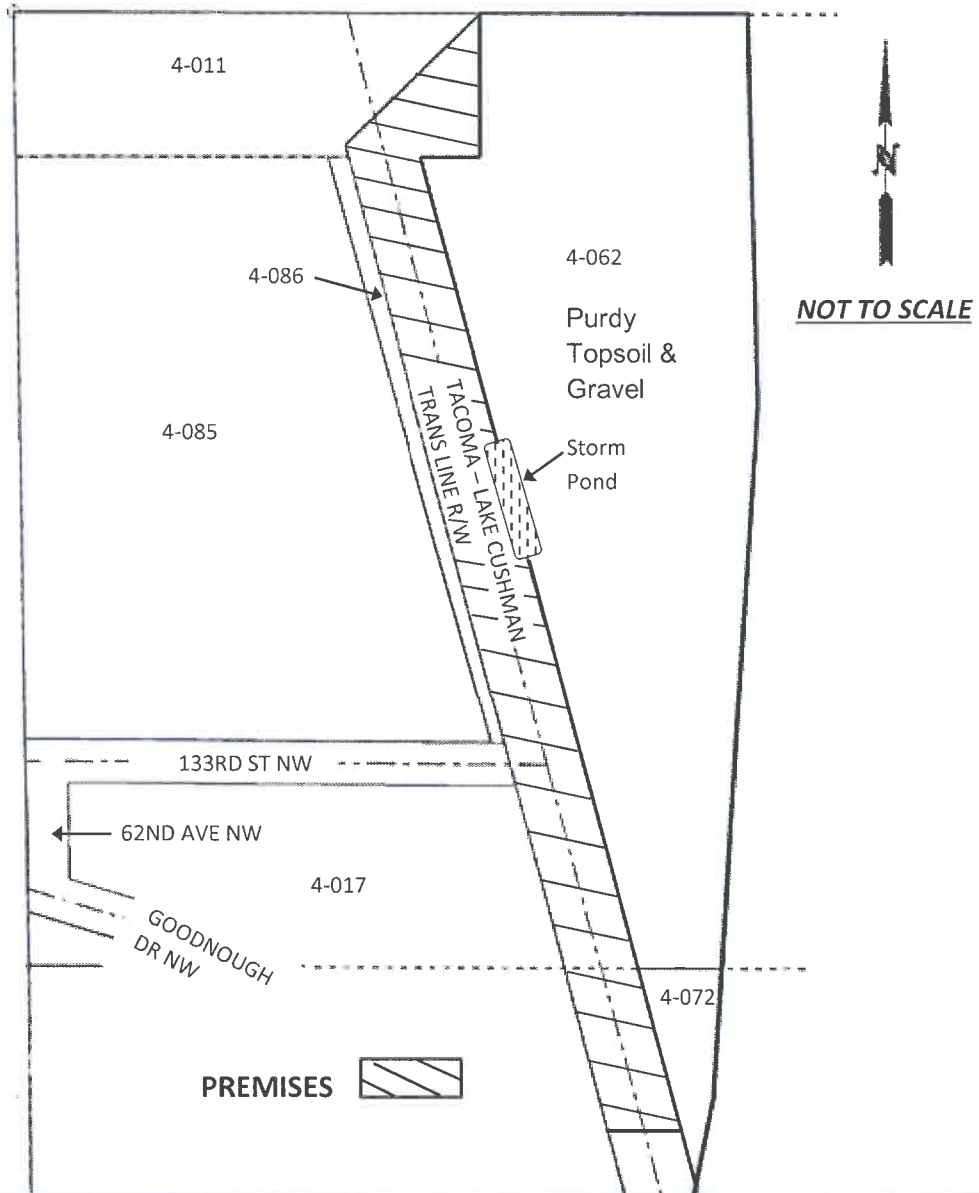
APPROVED AS TO FORM:

Deputy City Attorney

**City of Tacoma - Department of Public Utilities
Light Division Permit No. 2485**

MAP OF PREMISES

**Portion of the West Half of the Southeast Quarter of
Section 24, Township 22 North, Range 1 East, W.M.,
in Pierce County, Washington.**



REAL PROPERTY SERVICES ILLUSTRATION

**Reference No.
P2019-234 DJB**

This illustration is not to scale. It is provided as a customer convenience to assist in identifying significant characteristics of the installation. No liability is assumed by reason of reliance hereon.

Exhibit A

EXHIBIT B SPECIAL CONDITIONS

1. ACCESS

Licensee shall at all times provide Licensor unconditional and unrestricted access over and across Licensee's abutting property to and from the Premises for any purposes deemed necessary by the Licensor.

2. LANDSCAPING/TREES

A. Licensee shall not install any landscaping or plant any trees or shrubs on the Premises that are not included on Licensor's approved tree list ("Right Tree in the Right Place") unless and until approved in writing by Licensor.

B. Licensor, at its sole discretion, may remove any and all vegetation, trees or landscaping and Licensee agrees to compensate Licensor for any costs associated with said removal.

3. ECONOMIC LOSS

Licensor shall not be liable to the Licensee or to any third parties for any losses whatsoever that are associated with the termination of this Permit.

To the fullest extent allowed by law, the Licensee agrees to indemnify, defend and hold harmless the City of Tacoma, its officers and employees, from any and all claims or litigation arising in connection with reduced parking or drive thru area upon termination of this Permit.

4. INSPECTION

Upon termination of the Permit/License, the Licensee agrees to meet with Licensor at the Premises to allow inspection of the property and ensure that all conditions of the Permit/License have been fulfilled. Licensor can be contacted at Real Property Services at (253) 396-3060.

5. INSPECTIONS AND APPROVALS

A. Licensor's review, approval, or consent to any proposals, drawings, and/or plans shall not be deemed to be consent, authorization, acknowledgment, certification, warranty, or representation that Licensee has obtained all required authorizations or that said proposals, drawings, or plans are in any way sufficient or appropriate for the intended purpose, or that said proposals, drawings, or plans comply with, regulatory, design, or engineering standards.

B. Any inspections performed by Licensor, or Licensor's failure to conduct an inspection, shall not operate to or in any manner impose any legal duty or liability on Licensor or relieve Licensee of any responsibility, obligation, duty or liability under this License or imposed by any applicable law, rule or regulation.

6. ENVIRONMENTAL

- A.** Licensee shall not adversely impact any wetlands on the Premises. All wetland inspection and mitigation shall be satisfied before construction can begin.
- B.** Runoff from Licensee's Permitted Use shall not be directed onto Licensors' property. Licensee shall prevent pooling of water on the Premises and adjacent Licensors' lands, creation of wetlands in previously dry areas, and any and all actions which could impact the water quality of existing wetlands.
- C.** Licensee shall not use herbicides on the Premises, and shall prevent use on adjoining lands, which could contaminate or injure Licensors' land or facilities.
- D.** No blasting shall be done on the Premises.
- E.** Licensors may revoke this Permit/License if, in its sole opinion, cultural resources may be threatened.

7. RISK ASSESSMENT

A Phase 1 Environmental Risk Assessment, identifying potential exposures and hazards, may be required at the commencement of the Permit/License period and upon termination of said Permit/License period.

Licensee agrees to pay ONE HUNDRED DOLLARS (\$100.00), as hereafter may be amended, for each such assessment.

8. INSURANCE

- A.** During the term of this Permit/License, Licensee and its contractors, shall obtain and maintain at its sole expense the following liability insurance coverage:
 - i.** A policy of Commercial General Liability insurance coverage, providing coverage for claims of bodily injury, death, personal injury, and property damage arising from operations on the Licensors' property. Coverage shall include, but not be limited to: products hazard and completed operations coverage, contractual liability coverage, and employer stop gap coverage. The policy shall name the Licensors as an additional insured.
 - ii.** The Licensee and its contractor(s) shall obtain and have in place prior to entering upon the Licensors' property, a policy of Commercial Automobile Liability coverage, with the Licensors named as an additional insured.
- B.** For all insurance policies required by this section:
 - i.** Coverage shall be written on a policy form published by the Insurance Service Office (ISO) or its functional equivalent. The Licensors reserves the right to determine if a proposed policy is in fact a functional equivalent and its decision shall be conclusive on the issue.

- ii. Coverage shall be underwritten by insurance carriers licensed to do business in the State of Washington and of adequate financial strength (an A.M. Best Company rating of no less than A-V) subject to review and approval by the Licensor.
- iii. Coverage shall be primary over and non-contributing to the Licensor's own insurance coverage or program.
- iv. No coverage required by this section shall be subject to a deductible or self-insured retained limit in excess of \$10,000 without the Licensor's prior written approval. To assure that the Licensor receives the full benefit of coverage, the Licensee shall pay any deductible or self-insured retained limit on behalf of the Licensor, notwithstanding any negligence or liability on the part of the Licensor.
- v. All coverage required by this section shall be written on a per "occurrence" basis and not on a "claims-made" policy form.
- vi. All policies required by this section shall provide policy limits of no less than \$1,000,000 combined single limit of liability per occurrence with a general aggregate limit of \$2,000,000. The aggregate limit shall be dedicated or limited to the location or work reflected by the contract, permit or right of entry or industry track agreement by policy endorsement.
- vii. The Licensee and the Licensor, shall mutually and reciprocally waive claims of subrogation against each other for claims of damage to their property or injury to their employees, and shall obligate their insurance carriers to do the same. This provision is not intended to waive contractual indemnification obligations or claims under any additional insured policy provision.

C. Subcontractors. If any portion of Licensee's operation or work permitted by the Licensor is to be contracted by Licensee, Licensee must require that the contractor provide and maintain insurance and coverages set forth herein and require that its contractor release, defend, hold harmless, and indemnify the Licensor to the same extent and under the same terms and conditions as Licensee.

D. Certificate of Insurance. Certificates of Insurance, reflecting evidence of the required insurance and coverage as described in A. above, shall be sent to the following address prior to the use of any rights provided by the Permit/License:

Tacoma Public Utilities
Real Property Services
3628 South 35th Street
Tacoma, WA 98409

The certificate shall be filed with the acceptance of the Permit/License and annually thereafter. All coverage shall be listed on one certificate with the same expiration dates.

In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the Permit/License, then, in that event, the Licensee shall furnish, at least 30 days prior to the expiration of the date of such insurance, a renewed certificate of

insurance as proof that equal and like coverage has been or will be obtained prior to any such lapse or termination.

Failure to obtain or provide adequate evidence of the required insurance and coverage will entitle, but not require, the Licensor to terminate this Permit/License.

E. Modification / Adjustment of Insurance Requirements. The Licensor reserves the right to modify the insurance requirements of this Permit/License, require any other insurance coverage, or adjust the policy limits as it deems reasonably necessary to reflect then-current risk management practices. Licensee shall have thirty (30) days from receipt of written notice of the change, modification, or adjustment to provide the Licensor with a Certificate of Insurance evidencing that Licensee has obtained the required insurance as described in the notice.

9. TRANSMISSION LINE SAFETY

A. Clearances. Licensee shall use good and reasonable judgment with regard to type and height of vehicles allowed to access the Premises, and in allowing any use of tools or activities which could endanger Licensee's employees, licensees, agents, patrons, invitees, or any other person(s). Licensee expressly acknowledges the high voltage transmission lines over the licensed Premises and the extreme danger and hazard to life and property associated with such high voltage power lines.

B. Work under Power Lines. Licensee, for itself and on behalf of its agents and contractors and personnel, agrees to adhere to all applicable safety codes and laws, including but not limited to, National Electric Safety Code, Washington Administrative Codes, WAC 296-24-960, "Working On or Near Energized Parts", WAC 296-155-428 "General Requirements", WAC 296-155-53408 "Power Line Safety", and Tacoma's standards.

C. Grading, Digging. No filling and/or grading within said Premises shall be accomplished in such manner as to reduce vertical distance between the ground surface and Licensor's wires or jeopardize the lateral support of any of Licensor's poles or anchors. Licensee shall not excavate deeper than twenty-four inches (24") within twenty-five feet (25') of poles or anchors, nor shall Licensee excavate more than six inches (6") within four feet (4') of existing poles or anchors, with a transition to other grades not to exceed 6:1 to allow for vehicular travel, without obtaining Licensor's prior written approval. No excavation on the Premises is allowed which impedes Licensor's access to its facilities. Licensee shall fill any ditches or holes it digs on the licensed Premises each day before sunset. Prior to commencing any such approved digging, Licensee agrees to comply with RCW Chapter 19.122.

D. Electromagnetic Fields. Electric devices, including power lines, emit electromagnetic fields (EMF). Some studies have shown that EMF may affect human and/or animal biological systems. Although a National Academy of Sciences Committee has concluded that the findings to-date do not support claims that EMF fields are harmful to a person's health, the Licensee is hereby notified that potential causal connections between EMF and human diseases may exist. Licensor does not warrant that use of this Licensor's real property (the Premises) is without risk of exposure to EMF. In spite of this concern, the Licensee has decided to enter into this Permit/License with Licensor and expressly assumes all risk of harm as set forth herein.

E. Static Electrical Charge. Metallic structures (fences, metal buildings, etc.) installed near high voltage power lines may, under some conditions, become energized with a "static" electrical charge. Licensee shall take necessary measures to eliminate the possibility of static electrical shock to persons coming in contact with such structures.

**EXHIBIT C
PERMIT/LICENSE FEES**

1. FEES

A. Processing / Administrative Fees. Licensee shall pay the sum of FIVE DOLLARS (\$ 500.00) for Permit/License processing and administration.

B. Use Fee. A Use Fee in the sum of THIRTY-THREE THOUSAND DOLLARS (\$33,000) per year shall be payable by Licensee to Licensor in advance on or before the Effective Date and each year thereafter during the Permit/License period. Licensor will provide an invoice for the property Use Fee due each year.

C. Payment. Payment of all Fees shall be made payable to City of Tacoma Treasurer and delivered to City of Tacoma, Department of Public Utilities, P.O. Box 11007, Tacoma, Washington 98411, or such other address as the Department of Public Utilities may hereafter designate. Each payment shall reference P2019-234/P2485.

2. CHARGE FOR LATE PAYMENTS

A. Licensee hereby acknowledges that the late payment of any Use Fee, or other sums due hereunder, will cause Licensor to incur costs not contemplated by this Permit/License, the exact amount of which will be difficult to ascertain. Such costs include, but are not limited to, costs such as administrative processing of delinquent notices, increased accounting cost, and loss of interest income. Accordingly, if any payment of fees due hereunder is not paid within 30 days of the initial invoice date, a late charge of one percent (1%) per month on the delinquent balance with a minimum late payment charge of \$3.00, in addition to the past due amount itself, shall become immediately due and payable to Licensor.

B. Acceptance by Licensor of such late charges and/or any portion of the overdue payment shall in no event constitute a waiver of Licensee's default with respect to such overdue payment, nor prevent Licensor from exercising any of the other rights and remedies granted hereunder or by any provision of law.

3. FEE ADJUSTMENTS

A. Licensor may review and, by letter, amend this Permit/License for the purpose of increasing the Use Fee amounts provided for herein.

B. The Use Fee specified in paragraph 1 above may be increased, at the sole option of Licensor, a total of three percent (3%) at the end of the each year following the effective date of this Permit/License as follows:

Annual Permit Fee (2020-2021)	\$33,000
Year 2 (3% escalator) 2021-2022	\$33,990
Year 3 (3% escalator) 2022-2023	\$35,010
Year 4 (3% escalator) 2023-2024	\$36,060
Year 5 (3% escalator) 2024-2025	\$37,142

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01/20/2017 09:39:57 AM \$91.00
AUDITOR, Pierce County, WASHINGTON

WHEN RECORDED RETURN TO:
Tacoma Public Utilities
Real Property Services
PO Box 11007, Tacoma, WA 98411

**CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
PERMIT NO. 2330**

Reference No.:	P2015-145/P2330
Licensor:	City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power)
Licensee:	WR Holdings, LLC and Purdy Topsoil & Gravel, LLC
Legal Description:	Portion of the West half of the Southeast Quarter of Section 24, Township 22 North, Range 1 East, W.M.
Tax Parcel No.(s):	Portion of 0122244011
County:	Pierce
Permit Expiration Date:	9 TH day of JANUARY 20 20
Supersedes and Replaces:	This Permit supersedes and replaces Tacoma Power Permit No. 1960 recorded under Pierce County Auditor's File No. 200909020642

CONTACT INFORMATION

LICENSEE:

David G. Randles
WR Holdings, LLC and
Purdy Topsoil & Gravel, LLC
5802 192nd Street E
Puyallup, WA 98375
(253) 219-1803

LICENSOR:

Tacoma Public Utilities
Real Property Services
3628 South 35th Street
Tacoma, Washington 98409
(253) 396-3060

This Permit ("Permit") made and entered into this 9TH day of JANUARY, 2017 ("Effective Date"), by and between the CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a. Tacoma Power), a municipal corporation, hereinafter referred to as "Licensor" and WR Holdings, LLC, a Washington limited liability company, and

Purdy Topsoil & Gravel, LLC, a Washington limited liability company, hereinafter collectively referred to as "Licensee."

RECITALS

A. Licensors own, operate, and maintain the Premises defined below as part of and in relation to its utility operations.

B. Licensee desires to use a specified portion of said Premises for the use specified in this Permit.

C. Licensors are willing to grant permission to Licensee to access and use a portion of its real property strictly for the use specified in this Permit and issue Licensee a real property license to use said real property per the terms and conditions specified in this Permit.

NOW THEREFORE, in consideration of the mutual promises contained in this Permit, the parties agree as follows:

1. LICENSE.

A. Grant of License / Description of Premises. Licensors grant to the Licensee limited, non-exclusive, revocable permission to use the following described Premises for the Permitted Use stated below subject to all the terms and conditions of this Permit:

A PORTION OF THAT CERTAIN TRACT OF LAND CONVEYED TO THE CITY OF TACOMA BY WARRANTY DEED DATED SEPTEMBER 6, 1923 AND RECORDED OCTOBER 22, 1923 UNDER PIERCE COUNTY AUDITOR'S FILE NO. 686747 DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 22 NORTH, RANGE 1 EAST, W.M.; THENCE RUNNING EAST 660 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 200 FEET; THENCE WEST 86.5 FEET; THENCE SOUTH 14°49' EAST, 1165 FEET MORE OR LESS TO THE SOUTH LINE OF SAID SUBDIVISION; THENCE WEST ALONG THE SAME 103.4 FEET; THENCE NORTH 14°49' WEST, 1185 FEET; THENCE NORTHEASTERLY TO THE POINT OF BEGINNING.

TOGETHER WITH A PORTION OF THAT CERTAIN TRACT OF LAND ACQUIRED BY THE CITY OF TACOMA BY JUDGMENT NO. 1 OF PIERCE COUNTY SUPERIOR COURT CAUSE NO. 51234 DATED JULY 30, 1923 RECORDS OF PIERCE COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

A STRIP OF LAND 100 FEET IN WIDTH LYING 50 FEET ON EACH SIDE OF A CENTERLINE LOCATED AS FOLLOWS: BEGINNING ON THE NORTH LINE OF THE NORTH 382.71 FEET OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 22 NORTH, RANGE 1 EAST, W.M.; AT A POINT 548 FEET DISTANT WEST OF THE NORTHEAST CORNER OF SAID SUBDIVISION; RUNNING THENCE SOUTH 14°49' EAST, 280 FEET BEING THE TERMINUS OF THIS DESCRIBED CENTERLINE. THE NORTHERLY END OF SAID STRIP BEING THE NORTH LINE OF SAID SUBDIVISION AND THE SOUTHERLY END OF SAID STRIP BEING PERPENDICULAR TO THE NORTH LINE OF SAID SUBDIVISION.

CONTAINING 165,000 SQ. FT. MORE OR LESS.

(hereinafter "Premises")

Map of Premises is attached to this Permit as Exhibit A.

B. Purpose.

i. **Permitted Use.** Licensor permits the Premises to be used by the Licensee, and Licensee's agents, contractors, employees, customers, guests, and invitees, only for the express purpose of:

- Ingress and egress
- Operation and maintenance of an existing customer and/or employee parking area
- Existing material storage
- Existing private utility lines and structures (power, storm sewer and water)
- Existing storm pond

(hereinafter "Permitted Use")

ii. **No Other Use Is Permitted.** Licensee may only use the Premises in strict accordance with this Permit. Licensee shall make no other use of the Premises or change or enlarge Licensee's use thereof without prior written approval of Licensor.

C. No Property Rights Are Granted. This Permit does not convey any right, title, or interest in real property or in the above described Premises. The permission granted by this Permit is a license in real property only.

D. CONDITION OF PREMISES. LICENSEE HAS INSPECTED THE PREMISES AND ACCEPTS IT IN ITS PRESENT CONDITION "AS-IS." LICENSOR EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE PREMISES ARE SUITABLE FOR THE PERMITTED USE.

E. Third Party Obligations. Licensee shall ensure that its agents, contractors, employees, customers, guests, and invitees shall comply with all the requirements, obligations, limitations, and restrictions of this Permit. The Permit and permissions granted herein are contingent upon Licensee and Licensee's agents, contractors, employees, customers, guests, and invitees complying with all the terms and conditions of this Permit.

F. Special Conditions.

Special Conditions are attached to this Permit as Exhibit B "Special Conditions"

2. PERMIT PERIOD

A. Term. The term of this Permit and the permission and license granted herein shall be effective for a three (3) year period beginning on the Effective Date.

B. Permit Extension. Licensee may submit a term extension request and applicable fee to Licensors no later than sixty (60) days before the Permit terminates per Section 2.A. A mandatory site inspection will be required for all Permit term extensions. After receipt of the request and site inspection, Licensors may, in its sole discretion, increase the term of this Permit. Permit extensions will not be granted if any conditions have changed since the original Permit was granted and/or any permitted structures or improvements are not in compliance with the terms and conditions of this Permit.

C. Permit Re-Issuance. In the event this Permit is terminated and Licensors thereafter grants a new Permit to Licensee, Licensee shall pay all fees owing to process a new permit.

3. FEES AND COSTS

A. Fees. Licensee shall pay all fees, deposits, and charges specified in and in accordance with Exhibit C "Land Use Permit Fees" attached.

B. Licensee Assumes all Costs. Licensee hereby expressly assumes liability and responsibility for all expenses and costs associated with this Permit and the Permitted Use.

C. Licensee to Pay Costs to Enforce Conditions of Permit. Licensee agrees to reimburse Licensors for any costs (including reasonable attorney's fees) that Licensors may incur in enforcing the terms and conditions of this Permit.

D. Licensee Liable for Damages. Licensee shall pay or reimburse Licensors for all damages to Licensors's property or the Premises resulting from the actions of Licensee or any of Licensee's agents, guests, or invitees.

E. Leasehold Excise Tax. In addition to the Land Use Permit Fees, Licensee shall pay Licensors:

- i. all leasehold excise tax (as required by RCW 82.29A in lieu of real property taxes) to the extent that any is determined to be due as a result of this Permit,
- ii. any surface water and other governmental charges and assessments (special and general) of every kind and nature levied or assessed against the Premises, and
- iii. any taxes levied or assessed in lieu of the foregoing, in whole or in part.

Leasehold excise tax is calculated by the State, and assessed against a variety of interests in real property, including, without limitation, permits, licenses and facility use agreements (none of which are leases) using a percentage multiplier of either the rent/use fee/permit fee/license fee required hereunder or an imputed fair market value of the same, and as a result, Licensee shall be responsible for any increases in leasehold excise tax that result from an increase in rent/use fee/permit fee/license fee for the Premises over the term hereof, or for increases due to an increase in the statutory rate during the term of this Permit. If Licensee provides Licensors with a proof of exemption from payment of leasehold excise tax issued by the Washington State Department of Revenue, then Licensee shall not be required to pay leasehold excise tax for the period that such exemption is effective. If the exemption is of limited duration, Licensee shall be

required to obtain documented renewal of such exemption and provide such to Licensor in order to claim continued exemption under this Permit.

4. MAINTENANCE OF PREMISES AND IMPROVEMENTS

A. Maintenance Requirements. The Premises, including any improvements, structures, facilities, and/or equipment will be maintained at the Licensee's sole cost, in a safe condition, in a clean and neat manner, and in accordance with the specifications of the Permit and attached Exhibits.

B. Assumption of Risk. Any improvements, facilities, or equipment allowed per this Permit on the Premises shall be subject to being damaged by Licensor's use or operations. Licensee assumes the risk of these limited use rights and will be responsible for the costs and expenses in restoring the Premises.

C. Maintenance Notice. Licensee shall notify Licensor four (4) weeks prior to scheduled maintenance of the Premises or improvements permitted by this Permit that could potentially interfere with Licensor's use of the Premises. The parties agree that if maintenance schedules result in a construction or use conflict, Licensor's schedule shall prevail. If emergency maintenance is required on Licensee's facilities, Licensee shall notify Licensor as soon as reasonably practical.

5. NO WARRANTY

Licensor does not warrant its authority to permit the above described Permitted Use and Licensee shall secure any other rights or permissions that are needed for Licensee's lawful use of the Premises.

6. PURPOSE AND CONTROL OF PREMISES

Licensor owns the Premises as part of its utility system and the Premises are necessary for the operation, maintenance, and improvement of its utility system facilities. Licensee therefore acknowledges that the primary purpose of the Premises is Licensor's operations. Thus, the permission granted by this Permit is subject and subordinate to Licensor's paramount rights and operations. Licensee shall not in any way interfere with Licensor's use of or operations on the Premises. Licensee shall not prohibit or in any way limit access to the Premises by any city, state, or federal regulatory agency, Licensor, or other party granted permission by Licensor to access and use the Premises. Licensor may, in its sole discretion, require Licensee to move or modify its use, operations, facilities, or structures at Licensee's expense. Further, Licensee, its agents, employees, or property is subject to the hazards of Licensor's utility operations, which Licensee hereby expressly assumes.

7. TEMPORARY EXCLUSIVE CONTROL

A. Exclusive Control. Licensor, in its sole discretion, may assert temporary exclusive control over the Premises, including temporarily excluding Licensee from the Premises, when exclusive control is needed for Licensor's operations.

B. Hold Harmless. Licensee agrees to hold Licensor harmless against any claims,

demands or damages related to denial of access and use of the Premises.

8. PERMIT NON-EXCLUSIVE / SUBJECT TO REGULATION AND CITY OF TACOMA POLICY

A. Other Permits. This Permit is nonexclusive and shall not prohibit Licensor from granting permits or licenses to the same Premises to others.

B. Other Agreements. The rights granted by this Permit shall be subject to any prior, concurrent, or subsequent agreements or contracts entered into or that may be entered into by Licensor or the City of Tacoma.

C. Regulation. Licensee shall obtain all applicable permits or approvals from federal, state, or local agencies prior to use of or construction on the Premises as allowed by this Permit. The Licensee shall give full cooperation to any federal, state, county, or local agencies having jurisdiction over the Premises or use of the Premises.

D. City of Tacoma Policy. Licensor and the City of Tacoma reserves the right to prescribe additional rules, policies, and regulations relating to the rights, use, and permission granted under this Permit. Licensor will endeavor to give sixty (60) days' notice to Licensee of any such additional rules, policies, and regulations.

9. SUPERVISION

Licensee shall give the conduct, operation, and maintenance of the Premises and Permitted Use its personal supervision and direction.

10. NUISANCES PROHIBITED

The Licensee will maintain the Premises in a clean, neat, and orderly manner and will not create or permit any nuisance to exist or allow the Premises to be used for any immoral or unlawful purposes.

11. NONLIABILITY

Licensor shall not be liable to the Licensee or to any third parties entering upon the Premises related to or in furtherance of any act or thing done in connection with the Permitted Use or other use of the Premises. Licensee, on behalf of itself and its employees, personnel, contractors, agents, invitees, or licensees expressly assumes all risks associated with the Permitted Use or other use of the Premises.

12. INDEMNIFICATION

Licensor shall in no way be liable or responsible for any injury or damage done or occasioned by the actions or operations of Licensee or Licensee's contractors, agents, employees, customers, guests, and invitees under this Permit, and Licensee binds and obligates itself to pay and satisfy any and all claims arising on account of its operations under this Permit. To the fullest extent allowed by law, the Licensee agrees to indemnify, defend and hold harmless the Licensor and the City of Tacoma, its officers and employees, from and against any and all

claims for damages or loss to the Licensor's or the City of Tacoma's operations or property and from any and all claims or litigation arising in connection with this Permit and/or Licensee's use of the Premises. This includes damages to or loss of property and personal injury, including injury to or death of Licensee or Licensee's agents, contractors, employees, customers, guests, and invitees, which may be caused or occasioned by the existence, operation, use or maintenance of any and all of the property subject of this Permit or associated with the license granted hereunder, or caused or occasioned by any act, deed or omission of the Licensee, Licensee's contractors, agents, employees, guests, customers or invitees.

In this regard, Licensee hereby waives immunity under Title 51 RCW, Industrial Insurance Laws, and acknowledges that this provision has been mutually negotiated. The Licensor and the City of Tacoma agrees to be responsible for its sole negligence or the sole negligence of its employees and officers occurring within the scope of their employment.

13. HAZARDOUS SUBSTANCES AND/OR CONDITIONS

A. No goods, merchandise or material shall be kept, stored or sold on the Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be conducted therein, thereon or therefrom other than as provided for in this Permit. No machinery or apparatus shall be used or operated on the Premises which will in any way injure the Premises; provided, however, that nothing in this paragraph shall preclude Licensee from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are necessary or customary in carrying out the authorized uses under this Permit.

B. In the event such uses include keeping or storing inflammable or explosive substances, such substances shall be stored in closed containers and shall be stored, used or dispensed in the manner prescribed by the regulations of Licensor or other public body having authority in the matter and, in any event, in the safest manner reasonably possible. Licensee shall be solely liable for the remediation of any Hazardous Substance and/or conditions on the Premises resulting from Licensee's use of Premises. "Hazardous Substance" means any substance which now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup.

14. INSPECTION

This Permit is a Real Property license and conveys no possessory interests whatsoever. Licensor may, therefore, enter the Premises at any time for any reason.

15. TERMINATION

A. **Notice of Termination.** This Permit may be terminated by the Licensee or Licensor upon ninety (90) days written notice, for any reason stated in said notice, mailed by certified mail to the Licensee at 5802 192nd Street East, Puyallup, WA 98375, OR to Licensor at PO Box 11007, Tacoma, Washington 98411.

B. Operational Necessity. In the event it should become necessary, as determined by Licensor in its sole discretion, for Licensor to make use of the Premises to such an extent as to necessitate discontinuance of the use thereof by the Licensee, Licensor may terminate this Permit by giving Licensee written notice of such termination at any time. Said notice to be given by certified mail addressed to Licensee at 5802 192nd Street East, Puyallup, WA 98375, and termination shall be effective IMMEDIATELY upon delivery thereof.

C. Insolvency/Bankruptcy. It is hereby agreed that if the Licensee becomes either insolvent or files a proceeding in bankruptcy, or if a receiver is appointed, Licensor may, upon giving ten (10) days' notice to the Licensee, cancel this Permit and Licensee shall cease the Permitted Use and vacate the Premises.

D. Vacation of Premises. Upon the termination of this Permit for any reason, the Licensee agrees to promptly and peaceably vacate the subject Premises and to return said Premises and any structures and/or improvements located on the Premises prior to the beginning date of this Permit to Licensor in as good condition as the same existed prior to the execution of this Permit, reasonable wear and tear excepted. If the Licensee's structures and/or improvements existed prior to this Permit, the Licensee shall return the Premises to the Licensor in a condition that is satisfactory to the Licensor. Satisfactory condition of the returned Premises shall be determined at the Licensor's sole discretion. Any damages to the subject Premises or to cultural resources on the Premises shall be repaired at Licensee's expense.

16. ASSIGNMENT

This Permit is non-assignable and non-transferable.

17. MISCELLANEOUS

A. Entire Agreement. This Permit constitutes the entire agreement and understanding of the parties and supersedes all discussions and other agreements between the parties. There are no representations or understandings of any kind not set forth herein. Notwithstanding anything to the contrary in this section, Licensor policies, regulations, and procedures will apply to and govern the terms and conditions and the permission granted by this Permit.

B. Amendments. Any amendments to this Permit must be in writing and executed by both Parties.

C. Governing Law. This Permit shall be construed in accordance with the laws of the State of Washington.

D. Enforceability. Parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

E. Exhibits. All Exhibits referred to herein or attached hereto are incorporated herein for all purposes.

F. Mutual Negotiation. Licensee acknowledges that this Permit has been mutually negotiated and any ambiguity regarding the terms and conditions herein shall not be

construed or interpreted against Licensor as the drafter of this Permit.

G. Recording. This Permit or a memorandum hereof shall, at the Licensor's sole discretion, be recorded in any public office.

H. No Waiver. Failure of Licensor to insist on the performance of any of the terms and conditions of this Permit, or the waiver of any breach of any of the terms and conditions of this Permit, shall not be construed as waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

I. Section Headings. The titles to the sections and paragraphs of this Permit are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Permit.

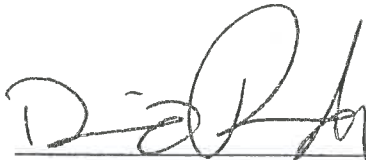
J. Survival

The following sections will survive the termination of this Permit and remain enforceable against Licensee after termination:

Sections 2.C, 7, 12, 13, 15, 17.C and 17.D.

IN WITNESS WHEREOF, I have executed this instrument at Pierce County, State of Washington, on behalf of WR Holdings, LLC, said company having caused its company name to be hereunto subscribed and affixed and these presents to be executed by its Managing Member thereunto duly authorized, this 22nd day of December, 2016

WR HOLDINGS, LLC



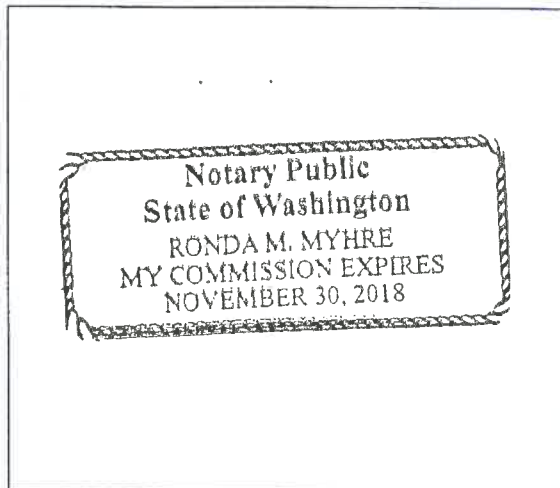
David G. Randles, Managing Member

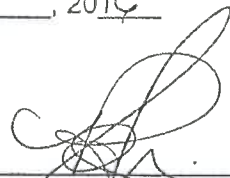
STATE OF WASHINGTON)
) SS
COUNTY OF Pierce)

I certify that I know or have satisfactory evidence that David G. Randles is the person who appeared before me, and said person acknowledged that he signed this instrument, and on oath stated that he is authorized to execute the instrument and acknowledged it as the Managing Member of WR Holdings, LLC to be the free and voluntary act and deed of such company for the uses and purposes mentioned in the instrument.

Dated this 22nd day of December, 2016

Place Notary Seal in Box





Notary Public in and for the State
Of Washington
Residing in Graham, WA
My Commission Expires 11-30-2018

IN WITNESS WHEREOF, I have executed this instrument at Pierce County, State of Washington, on behalf of Purdy Topsoil & Gravel, LLC, said company having caused its company name to be hereunto subscribed and affixed and these presents to be executed by its Managing Member thereunto duly authorized, this 22nd day of December, 2016.

PURDY TOPSOIL & GRAVEL, LLC



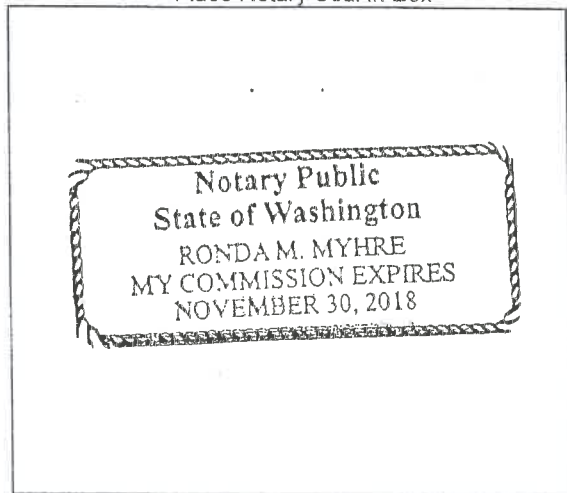
David G. Randles, Managing Member

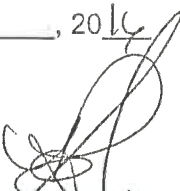
STATE OF WASHINGTON)
) SS
COUNTY OF Pierce)

I certify that I know or have satisfactory evidence that David G. Randles is the person who appeared before me, and said person acknowledged that he signed this instrument, and on oath stated that he is authorized to execute the instrument and acknowledged it as the Managing Member of Purdy Topsoil & Gravel, LLC to be the free and voluntary act and deed of such company for the uses and purposes mentioned in the instrument.

Dated this 22nd day of December, 2016

Place Notary Seal in Box





Notary Public in and for the State
Of Washington

Residing in Graham WA

My Commission Expires 11-30-2018

Dated this 9TH day of JANUARY, 2017

Approved:



Power Superintendent

Accepted:

Marie Hedman for Dolores Stegeman
Transmission and Distribution Manager

Form Approved:



Deputy City Attorney

Reviewed:

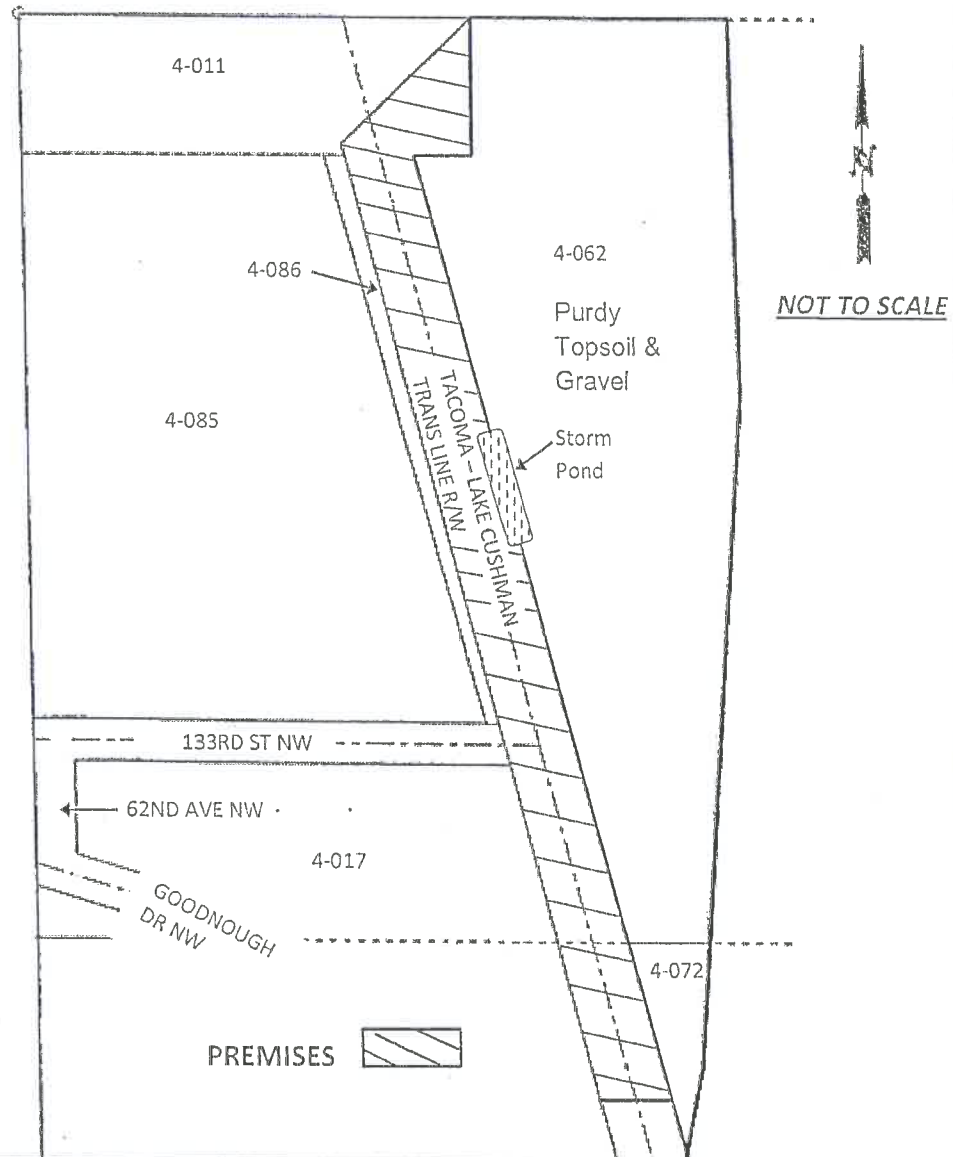


Chief Surveyor

City of Tacoma - Department of Public Utilities
Light Division Permit No. 2330

MAP OF PREMISES

Portion of the West Half of the Southeast Quarter of
Section 24, Township 22 North, Range 1 East, W.M.,
in Pierce County, Washington.



REAL PROPERTY SERVICES ILLUSTRATION

Reference No.
P2015-145 DJB

This illustration is not to scale. It is provided as a customer convenience to assist in identifying significant characteristics of the installation. No liability is assumed by reason of reliance hereon.

Exhibit A

**EXHIBIT B
SPECIAL CONDITIONS**

1. ACCESS

Licensee shall at all times provide Licensors unconditional and unrestricted access over and across Licensee's abutting property to and from the Premises for any purposes deemed necessary by the Licensors.

2. LANDSCAPING/TREES

A. Licensee shall not install any landscaping or plant any trees or shrubs on the Premises that are not included on Licensors approved tree list ("Right Tree in the Right Place") unless and until approved in writing by Licensors.

B. Licensors, at its sole discretion, may remove any and all vegetation, trees or landscaping and Licensee agrees to compensate Licensors for any costs associated with said removal.

3. ECONOMIC LOSS

Licensors shall not be liable to the Licensee or to any third parties for any losses whatsoever that are associated with the termination of this Permit.

To the fullest extent allowed by law, the Licensee agrees to indemnify, defend and hold harmless the City of Tacoma, its officers and employees, from any and all claims or litigation arising in connection with reduced parking or drive thru area upon termination of this Permit.

4. INSPECTION

Upon termination of the Permit/License, the Licensee agrees to meet with Licensors at the Premises to allow inspection of the property and ensure that all conditions of the Permit/Licensee have been fulfilled. Licensors can be contacted at Real Property Services at (253) 396-3060.

5. INSPECTIONS AND APPROVALS

A. Licensors review, approval, or consent to any proposals, drawings, and/or plans shall not be deemed to be consent, authorization, acknowledgment, certification, warranty, or representation that Licensee has obtained all required authorizations or that said proposals, drawings, or plans are in any way sufficient or appropriate for the intended purpose, or that said proposals, drawings, or plans comply with, regulatory, design, or engineering standards.

B. Any inspections performed by Licensors, or Licensors's failure to conduct an inspection, shall not operate to or in any manner impose any legal duty or liability on Licensors or relieve Licensee of any responsibility, obligation, duty or liability under this License or imposed by any applicable law, rule or regulation.

6. ENVIRONMENTAL

- A. Licensee shall not adversely impact any wetlands on the Premises. All wetland inspection and mitigation shall be satisfied before construction can begin.
- B. Runoff from Licensee's Permitted Use shall not be directed onto Licensor's property. Licensee shall prevent pooling of water on the Premises and adjacent Licensor's lands, creation of wetlands in previously dry areas, and any and all actions which could impact the water quality of existing wetlands.
- C. Licensee shall not use herbicides on the Premises, and shall prevent use on adjoining lands, which could contaminate or injure Licensor's land or facilities.
- D. No blasting shall be done on the Premises.
- E. Licensor may revoke this Permit/License if, in its sole opinion, cultural resources may be threatened.

7. RISK ASSESSMENT

A Phase 1 Environmental Risk Assessment, identifying potential exposures and hazards, may be required at the commencement of the Permit/License period and upon termination of said Permit/License period.

Licensee agrees to pay ONE HUNDRED DOLLARS (\$100.00), as hereafter may be amended, for each such assessment.

8. INSURANCE

- A. During the term of this Permit/License, Licensee and its contractors, shall obtain and maintain at its sole expense the following liability insurance coverage:
 - i. A policy of Commercial General Liability insurance coverage, providing coverage for claims of bodily injury, death, personal injury, and property damage arising from operations on the Licensor's property. Coverage shall include, but not be limited to: products hazard and completed operations coverage, contractual liability coverage, and employer stop gap coverage. The policy shall name the Licensor as an additional insured.
 - ii. The Licensee and its contractor(s) shall obtain and have in place prior to entering upon the Licensor's property, a policy of Commercial Automobile Liability coverage, with the Licensor named as an additional insured.
- B. For all insurance policies required by this section:
 - i. Coverage shall be written on a policy form published by the Insurance Service Office (ISO) or its functional equivalent. The Licensor reserves the right to determine if a proposed policy is in fact a functional equivalent and its decision shall be conclusive on the issue.

- ii. Coverage shall be underwritten by insurance carriers licensed to do business in the State of Washington and of adequate financial strength (an A.M. Best Company rating of no less than A-V) subject to review and approval by the Licensors.
- iii. Coverage shall be primary over and non-contributing to the Licensors' own insurance coverage or program.
- iv. No coverage required by this section shall be subject to a deductible or self-insured retained limit in excess of \$10,000 without the Licensors' prior written approval. To assure that the Licensors receive the full benefit of coverage, the Licensee shall pay any deductible or self-insured retained limit on behalf of the Licensors, notwithstanding any negligence or liability on the part of the Licensors.
- v. All coverage required by this section shall be written on a per "occurrence" basis and not on a "claims-made" policy form.
- vi. All policies required by this section shall provide policy limits of no less than \$1,000,000 combined single limit of liability per occurrence with a general aggregate limit of \$2,000,000. The aggregate limit shall be dedicated or limited to the location or work reflected by the contract, permit or right of entry or industry track agreement by policy endorsement.
- vii. The Licensee and the Licensors, shall mutually and reciprocally waive claims of subrogation against each other for claims of damage to their property or injury to their employees, and shall obligate their insurance carriers to do the same. This provision is not intended to waive contractual indemnification obligations or claims under any additional insured policy provision.

C. Subcontractors. If any portion of Licensee's operation or work permitted by the Licensors is to be contracted by Licensee, Licensee must require that the contractor provide and maintain insurance and coverages set forth herein and require that its contractor release, defend, hold harmless, and indemnify the Licensors to the same extent and under the same terms and conditions as Licensee.

D. Certificate of Insurance. Certificates of Insurance, reflecting evidence of the required insurance and coverage as described in A. above, shall be sent to the following address prior to the use of any rights provided by the Permit/License:

Tacoma Public Utilities
Real Property Services
3628 South 35th Street
Tacoma, WA 98409

The certificate shall be filed with the acceptance of the Permit/License and annually thereafter. All coverage shall be listed on one certificate with the same expiration dates.

In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the Permit/License, then, in that event, the Licensee shall furnish,

at least 30 days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage has been or will be obtained prior to any such lapse or termination.

Failure to obtain or provide adequate evidence of the required insurance and coverage will entitle, but not require, the Licensor to terminate this Permit/License.

E. Modification / Adjustment of Insurance Requirements. The Licensor reserves the right to modify the insurance requirements of this Permit/License, require any other insurance coverage, or adjust the policy limits as it deems reasonably necessary to reflect then-current risk management practices. Licensee shall have thirty (30) days from receipt of written notice of the change, modification, or adjustment to provide the Licensor with a Certificate of Insurance evidencing that Licensee has obtained the required insurance as described in the notice.

9. TRANSMISSION LINE SAFETY

A. Clearances. Licensee shall use good and reasonable judgment with regard to type and height of vehicles allowed to access the Premises, and in allowing any use of tools or activities which could endanger Licensee's employees, licensees, agents, patrons, invitees, or any other person(s). Licensee expressly acknowledges the high voltage transmission lines over the licensed Premises and the extreme danger and hazard to life and property associated with such high voltage power lines.

B. Work under Power Lines. Licensee, for itself and on behalf of its agents and contractors and personnel, agrees to adhere to all applicable safety codes and laws, including but not limited to, National Electric Safety Code, Washington Administrative Codes, WAC 296-24-960, "Working on or Near Energized Parts" and WAC 296-155-53408, "Power Line Safety", and Tacoma's standards.

C. Grading, Digging. No filling and/or grading within said Premises shall be accomplished in such manner as to reduce vertical distance between the ground surface and Licensor's wires or jeopardize the lateral support of any of Licensor's poles or anchors. Licensee shall not excavate deeper than twenty-four inches (24") within twenty-five feet (25') of poles or anchors, nor shall Licensee excavate more than six inches (6") within four feet (4') of existing poles or anchors, with a transition to other grades not to exceed 6:1 to allow for vehicular traffic, without obtaining Licensor's prior written approval. No excavation on the Premises is allowed which impedes Licensor's access to its facilities. Licensee shall fill any ditches or holes it digs on the licensed Premises each day before sunset. Prior to commencing any such approved digging, Licensee agrees to comply with RCW Chapter 19.122.

D. Electromagnetic Fields. Electric devices, including power lines, emit electromagnetic fields (EMF). Some studies have shown that EMF may affect human and/or animal biological systems. Although a National Academy of Sciences Committee has concluded that the findings to-date do not support claims that EMF fields are harmful to a person's health, the Licensee is hereby notified that potential causal connections between EMF and human diseases may exist. Licensor does not warrant that use of this Licensor's real property (the Premises) is without risk of exposure to EMF. In spite of this concern, the Licensee has decided to enter into this Permit/License with Licensor and expressly assumes all risk of harm

as set forth herein.

E. Static Electrical Charge. Metallic structures (fences, metal buildings, etc.) installed near high voltage power lines may, under some conditions, become energized with a "static" electrical charge. Licensee shall take necessary measures to eliminate the possibility of static electrical shock to persons coming in contact with such structures.

EXHIBIT C
PERMIT/LICENSE FEES

1. FEES

A. **Use Fee.** A Use Fee in the sum of TWENTY-THREE THOUSAND ONE HUNDRED DOLLARS (\$23,100.00) per year shall be payable by Licensee to Licensor in advance on or before the Effective Date and each year thereafter during the Permit/License period. Licensor will provide an invoice for the property Use Fee due each month.

B. **Payment.** Payment of all Fees shall be made payable to City of Tacoma Treasurer and delivered to City of Tacoma, Department of Public Utilities, PO Box 11007, Tacoma, Washington 98411, or such other address as the Department of Public Utilities may hereafter designate.

2. CHARGE FOR LATE PAYMENTS

A. Licensee hereby acknowledges that the late payment of any Use Fee, or other sums due hereunder, will cause Licensor to incur costs not contemplated by this Permit/License, the exact amount of which will be difficult to ascertain. Such costs include, but are not limited to, costs such as administrative processing of delinquent notices, increased accounting cost, and loss of interest income. Accordingly, if any payment of fees due hereunder is not paid within 30 days of the initial invoice date, a late charge of one percent (1%) per month on the delinquent balance with a minimum late payment charge of \$3.00, in addition to the past due amount itself, shall become immediately due and payable to Licensor.

B. Acceptance by Licensor of such late charges and/or any portion of the overdue payment shall in no event constitute a waiver of Licensee's default with respect to such overdue payment, nor prevent Licensor from exercising any of the other rights and remedies granted hereunder or by any provision of law.

3. FEE ADJUSTMENTS

A. Licensor may review and, by letter, amend this Permit/License for the purpose of increasing the Use Fee amounts provided for herein.

B. The Use Fee specified in paragraph 1 above may be increased, at the sole option of Licensor, a total of three percent (3%) at the end of the each year following the effective date of this Permit/License.



RESOLUTION NO. U-11135

A RESOLUTION related to Tacoma Water authorizing the execution of a new franchise agreement with the City of Auburn, for the operation of water facilities within City of Auburn right-of-way.

WHEREAS the City of Tacoma, Department of Public Utilities Water Division (d.b.a. "Tacoma Water"), recommends approval of a 20-year franchise agreement with the City of Auburn, with an optional 5-year extension, and

WHEREAS Tacoma Water operates approximately 6 miles of transmission pipeline running through the City of Auburn, and in 1969, a 50-year franchise agreement was signed with the City of Tacoma, and

WHEREAS the new franchise agreement details the terms and conditions under which Tacoma Water will install, construct, erect, operate, maintain, repair, and relocate its facilities in, on, over, under, along or across City of Auburn right-of-way, and

WHEREAS the agreement also covers topics such as utility relocation, insurance, and notification, with language similar to that found in more recent franchise agreements with other jurisdictions, and

WHEREAS the City of Auburn intends to take their franchise agreement before their City Council in March 2020 for approval, Now, Therefore,

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

That a new franchise agreement with the City of Auburn, for the operation of water facilities within the City of Auburn right-of-way is approved, and the Water Superintendent is authorized to execute a franchise agreement that is substantially in the same form as that on file with the Clerk of the Board



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and as approved by the City Attorney and such other documents as are
necessary.

Approved as to form and legality:



Chief Deputy City Attorney

Chair

Secretary

Clerk

Adopted _____



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: Ryan Flynn, Sr. Principal Engineer, Tacoma Water *RWF W5162*
MEETING DATE: January 8, 2020
DATE: December 11, 2019

SUMMARY:

Request Public Utility Board authorization for Tacoma Water to execute a new franchise agreement with the City of Auburn for the operation of water facilities within City of Auburn right of way.

BACKGROUND:

Tacoma Water operates approximately 6-miles of transmission pipeline running through the City of Auburn, varying in size from 48" to 60" in diameter. The original 50-year franchise agreement was granted to the City of Tacoma in 1969, as part of the construction of the Second Supply Pipeline.

The new franchise agreement has a duration of 20-years, with an optional 5-year extension.

The new franchise agreement details the terms and conditions under which Tacoma Water will install, construct, erect, operate, maintain, repair, relocate its facilities in, on, over, under, along or across City of Auburn right of way. Further, the agreement provides modernized language pertaining to topics such as utility relocation, insurance, and notification, similar to that found in more recent franchise agreements with other jurisdictions.

Since the Fall of 2018, staff from Tacoma Water and the City of Auburn have been negotiating a new franchise agreement for Tacoma Water facilities within City of Auburn right of way. The City of Auburn staff intends to take the franchise agreement before their City Council in March 2020 for approval. Tacoma Water is requesting Public Utility Board authorization to execute the new franchise agreement following approval by the City of Auburn City Council.

As there is no element of financial compensation contained within the new franchise agreement, approval by the City of Tacoma City Council is not necessary.

Tacoma Water operates three wholesale connections within the City of Auburn, which can provide wholesale water to the City of Auburn on an as needed basis. Tacoma Water does not provide retail water service to individual customers within the City of Auburn.



Board Action Memorandum

ISSUE: Tacoma Water is required to have a franchise agreement to operate water facilities within the City of Auburn right of way.

ALTERNATIVES: None.

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? N/A

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? No

ATTACHMENTS: Proposed City of Auburn Franchise Agreement
Original City of Auburn Franchise Agreement

CONTACT: Ryan Flynn, Sr. Principal Engineer, 253-396-3111

ORDINANCE NO. 6735

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, GRANTING A FRANCHISE FOR WATER FACILITIES TO THE CITY OF TACOMA

WHEREAS, The City of Tacoma, a Washington municipal corporation ("Grantee") has applied to the City of Auburn ("City") for a non-exclusive Franchise for the right of entry, use, and occupation of certain public right(s)-of-way within the City, to install, construct, erect, operate, maintain, repair, relocate and remove its facilities in, on, over, under, along or across those right(s)-of-way; and

WHEREAS, following proper notice, the City Council held a public hearing on Grantee's request for a Franchise, at which time representatives of Grantee and interested citizens were heard in a full public proceeding affording opportunity for comment by all persons wishing to be heard; and

WHEREAS, from information presented at the public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the City Council now deems it appropriate and in the best interest of the City and its inhabitants that the franchise be granted to Grantee,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN WASHINGTON, DO ORDAIN as follows:

Section 1. Grant of Right to Use Franchise Area

A. Subject to the terms and conditions stated in this Ordinance, the City grants to the Grantee general permission to enter, use, and occupy the right(s)-of-way and other public property specified in Exhibit "A" (the "Franchise Area").

B. The Grantee is authorized to install, remove, construct, erect, operate, maintain, relocate and repair Grantee Facilities to provide Grantee Services in the Franchise Area.

C. This Franchise does not authorize the use of the Franchise Area for any facilities or services other than Grantee Facilities and Grantee Services, and it extends no rights or privilege relative to any facilities or services of any type, including Grantee Facilities and Grantee Services, on public or private property elsewhere within the City.

D. This Franchise is non-exclusive and does not prohibit the City from entering into other agreements, including Franchises impacting the Franchise

Area, if the City determines that entering into those agreements does not interfere with Grantee's rights under this Franchise.

E. Except as explicitly set forth in this Ordinance, this Franchise does not waive any rights that the City has or may acquire with respect to the Franchise Area or any other City roads, rights-of-way, or property. This Franchise is subject to the power of eminent domain, and in any proceeding under eminent domain, the Grantee acknowledges its use of the Franchise Area has no value.

F. The City reserves the right to change, regrade, relocate, abandon, or vacate any right-of-way within the Franchise Area. If, at any time during the term of this Franchise, the City vacates any portion of the Franchise Area containing Grantee Facilities, the City will reserve an easement for public utilities within that vacated portion, pursuant to RCW 35.79.030, within which the Grantee may continue to operate any existing Grantee Facilities under the terms of this Franchise for the remaining period set forth under Section 3.

G. The Grantee agrees that its use of Franchise Area is subordinated to and subject to the City and the public's need for municipal infrastructure, travel, and access to the Franchise Area, except as may be otherwise required by law.

H. In addition to the rights granted to the Grantee to undertake and perform activities within the Franchise Area as provided in this Franchise, on prior written notification to the City, the Grantee will have the right to discharge Grantee water supply to and into the City's storm water system while performing water system flushing and other Grantee activities. Any Grantee water discharged to the City's storm water system must comply with all applicable federal and state water quality standards and the City's NPDES permit relating to the City's storm water system. Except in case of an emergency, Grantee will provide 15 business days' notice of a discharge.

Section 2. Notice

A. Written notices to the parties will be sent by personal delivery, overnight mail by a nationally-recognized courier, or by U.S. certified mail, return receipt requested to the following addresses. Either party may designate a new contact.

City: Right-of-Way Specialist
Public Works Department - Transportation
City of Auburn
25 West Main Street
Auburn, WA 98001-4998
Telephone: (253) 931-3010; Fax: (253) 931-3048

with a copy to: City Clerk
City of Auburn
25 West Main Street
Auburn, WA 98001-4998

Grantee: Water Superintendent
Tacoma Water
3628 South 35th Street
Tacoma, WA 98409-3192
Phone: (253) 502-8171 Fax: (253) 502-8694

B. Any changes to the contact information will be sent to the City's Right-of-Way Specialist, Public Works Department – Transportation Division, with copies to the City Clerk, referencing the title of this agreement.

C. Grantee voice and fax telephone numbers will be staffed at least during normal business hours, Pacific time zone. The City may contact Grantee at the following number for emergency or other needs outside of normal business hours of the Grantees: Water Control Center, (253) 502-8344.

Section 3. Term of Agreement

A. This Franchise will run for a period of twenty (20) years, from the date of execution.

B. Renewal Option of Term: The Grantee may renew this Franchise for an additional five (5) year period upon submission and approval of the application specified under ACC 20.06.130, as it now exists or is amended, within the timeframe set forth therein (currently 240 to 180 days prior to expiration of the then-current term). Any materials submitted by the Grantee for a previous application may be considered by the City in reviewing a current application, and the Grantee shall only submit those materials deemed necessary by the City to address changes in the Grantee Facilities or Grantee Services, or to reflect specific reporting periods mandated by the ACC.

C. Failure to Renew Franchise – Automatic Extension. If the Parties fail to formally renew this Franchise prior to the expiration of its term or any extension thereof, the Franchise automatically continues month to month until renewed or either party gives written notice at least one hundred and eighty (180) days in advance of intent not to renew the Franchise.

Section 4. Definitions

For the purpose of this agreement:

"ACC" means the Auburn City Code.

"Emergency" means a condition of imminent danger to the health, safety and welfare of persons or property located within the City including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots, acts of terrorism or wars.

"Grantee Facilities" or "Facilities" means water mains, fire hydrants, water valves, water services and meters, water system communication and monitoring equipment, and water appurtenances, for the purpose of providing water service.

"Grantee Services" or "Services" means providing the water facilities necessary to provide water service. A water service extends from the public water main to and including the water meter, and is owned and maintained by the Grantee.

"Maintenance or Maintain" means examining, testing, inspecting, repairing, maintaining and replacing the existing Grantee Facilities as required and necessary for safe operation.

"Normal business hours" means Monday through Friday from 8:00 AM to 5:00 PM excluding non-working holidays (New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Day following Thanksgiving Day, and Christmas Day)

"Relocation" means permanent movement of Grantee facilities required by the City, and not temporary or incidental movement of such facilities, or other revisions Grantee would accomplish and charge to third parties without regard to municipal request.

"Rights-of-Way" means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, easements, rights-of-ways and similar public properties and areas.

Section 5. Acceptance of Franchise

A. This Franchise, and any rights granted under it, will not become effective for any purpose until Grantee files with the City Clerk (1) the Statement of Acceptance (Exhibit "B,") (2) all verifications of insurance coverage specified

under Section 15 and, (3) payment of any outstanding application fees required in the City Fee Schedule. These four items will collectively be the "Franchise Acceptance". The date that the Franchise Acceptance is filed with the City Clerk will be the effective date of this Franchise.

B. If the Grantee fails to file the Franchise Acceptance with the City Clerk within thirty (30) days after the effective date of the ordinance approving the Franchise, the City's grant of the Franchise will be null and void.

Section 6. Construction and Maintenance

A. The Grantee will apply for, obtain, and comply with the terms of all permits required under ACC Chapter 12.24 for any work done within the City. Grantee will comply with all applicable City, State, and Federal codes, rules, regulations, and orders in undertaking such work.

B. Grantee agrees to coordinate its activities with the City and all other utilities located within the public right-of-way in which Grantee is undertaking its activity.

C. The City expressly reserves the right to prescribe where Grantee Facilities may or may not be installed within the public right-of-way and may require the removal, relocation or replacement of Facilities as provided for in this Franchise.

D. Before beginning any excavation work within the public right-of-way, the Grantee will comply with the One Number Locator provisions of RCW Chapter 19.122 to identify existing utility infrastructure.

E. Tree Trimming. Grantee will have the authority to reasonably trim vegetation on and overhanging streets, public rights-of-way, and places in the Franchise Area in order to prevent the branches of such trees from coming in physical contact with the Grantee Facilities. Grantee must get written approval from the City before trimming vegetation in or over the ROW, Grantee will be responsible for debris removal from trimming activities. If debris is not removed within twenty-four (24) hours of completion of the trimming, the City may, at its sole discretion, remove the debris and charge Grantee for the cost of removal. This section does not grant automatic authority to clear vegetation for purposes of providing a clear path for radio signals. Any general vegetation clearing will require a permit.

Section 7. Repair and Emergency Work

Emergency Work, Permit Waiver. If there is an emergency where any Grantee Facilities located in the Right-of-Way are broken or damaged, or if the Grantee's Facilities are in a condition that places the health or safety of any person or property in imminent danger, the Grantee will immediately take any necessary emergency measures to repair, replace or remove its Facilities without first applying for and obtaining permit(s) as required by this Franchise. Grantee will notify the City (at 253-931-3010 during normal business hours and during non-business hours at 253-876-1985) as soon as reasonably possible that it has taken emergency actions and will immediately obtain permit(s) for the activity if required by this Franchise or City Ordinance. The City may begin emergency response work, at any time, without prior written notice to the Grantee, but will notify the Grantee in writing as promptly as possible under the circumstances. Grantee will reimburse the City for all associated costs related to the City performing emergency response work within 30 days of receiving an invoice from the City.

Section 8. Damages to City and Third-Party Property

Grantee agrees that if any of its actions under this Franchise impairs or damages any City property, survey monument, or property owned by a third-party, Grantee will restore, at its own cost and expense, the property to a safe condition. All repair work will be performed and completed to the satisfaction of the City Engineer. Grantee reserves the right to seek reimbursement for costs from a third-party if the third-party fails to locate its facilities in accordance with RCW 19.22.

Section 9. Location Preference

A. Any structure, equipment, appurtenance or tangible property of a utility, other than the Grantee's, which was installed, constructed, completed or in place before Grantee's application for a permit to construct or repair Grantee Facilities under this Franchise will have preference as to positioning and location with respect to the Grantee Facilities. However, to the extent that the Grantee Facilities are completed and installed before another utility's submittal of a permit for new or additional structures, equipment, appurtenances or tangible property, then the Grantee Facilities will have priority. These rules governing preference will continue when relocating or changing the grade of any City road or right-of-way. A relocating utility will not cause the relocation of another utility that otherwise would not require relocation. This Section will not apply to any City facilities or utilities that may in the future require the relocation of Grantee Facilities. Those relocations will be governed by Section 11.

Section 10. Grantee Information

A. Grantee agrees to supply, at no cost to the City, any information reasonably requested by the City to coordinate municipal functions with Grantee's activities and fulfill any municipal obligations under state law. This information will include, at a minimum, as-built drawings of Grantee Facilities, installation inventory, and maps and plans showing the location of existing or planned facilities within the City. This information may be requested either in hard copy or electronic format, compatible with the City's data base system, including the City's Geographic Information System (GIS) data base. Grantee will keep the City informed of its long-range plans for coordination with the City's long-range plans.

B. The parties understand that Washington law limits the ability of the City to shield from public disclosure any information given to the City. Accordingly, the City agrees to notify the Grantee of requests for public records related to the Grantee, and to give the Grantee 10 business days to obtain an injunction to prohibit the City's release of records.

Grantee will indemnify and hold harmless the City for any loss or liability for fines, penalties, and costs (including attorneys' fees) imposed on the City because of non-disclosures requested by Grantee under Washington's public records act, if the City has notified Grantee of the pending request.

Section 11. Relocation of Grantee Facilities

A. Except as otherwise so required by law, Grantee agrees to relocate, remove, or reroute its facilities as ordered by the City Engineer at no expense or liability to the City, except as may be required by RCW Chapter 35.99. Pursuant to the provisions of Section 14, Grantee agrees to protect and save harmless the City from any customer or third-party claims for service interruption or other losses in connection with any such relocation, removal, or abandonment, or rerouting of the facilities.

B. If a readjustment or relocation of the Grantee Facilities is necessitated by a request from a party other than the City, that party shall pay the Grantee the actual costs thereof.

C. For all transmission mains, defined as mains exceeding 24 inches in diameter, within the Franchise Area, the City will attempt to design its projects to minimize the need for relocation. In the event the City's design calls for the relocation of a transmission main, the City and Franchisee will meet to discuss potential redesign solutions. Before moving forward with the development of a redesign, the City will provide Grantee with an estimate of the costs of the redesign

and construction. Any additional redesign or construction costs incurred by the City shall be borne by Grantee. If a redesign is not reasonably feasible, then Grantee shall relocate the transmission main at its sole cost.

Section 12. Abandonment and or Removal of Grantee Facilities

A. Within one hundred and eighty days (180) of Grantee's permanent cessation of use of any portion of the Grantee Facilities the Grantee will, at the City's discretion, either abandon in place or remove the affected facilities. Facilities that exist in an on-demand or standby capacity are exempt from this requirement.

B. The parties expressly agree that this Section will survive the expiration, revocation or termination of this Franchise.

Section 13. Indemnification and Hold Harmless

A. The Grantee will defend, indemnify, and hold the City and its officers, officials, agents, employees, and volunteers harmless from any and all costs, claims, injuries, damages, losses, suits, or liabilities of any nature including attorneys' fees arising out of or in connection with the Grantee's performance under this Franchise, except to the extent those costs, claims, injuries, damages, losses, suits, or liabilities are caused by the sole negligence of the City. If a court of competent jurisdiction determines that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the City, its officers, officials, employees, and volunteers, the Grantee's liability hereunder will be only to the extent of the Grantee's negligence.

B. The Grantee will hold the City harmless from any liability arising out of or in connection with any damage or loss to the Grantee Facilities caused by maintenance or construction work performed by, or on behalf of, the City within the Franchise Area or any other City road, right-of-way, or other property, except to the extent any damage or loss is directly caused by the negligence of the City, or its agent performing such work.

C. The Grantee acknowledges that neither the City nor any other public agency with responsibility for firefighting, emergency rescue, public safety or similar duties within the City has the capability to provide trench, close trench or confined space rescue. The Grantee, and its agents, assigns, successors, or contractors, will make arrangements as Grantee deems fit for the provision of such services. The Grantee will hold the City harmless from any liability arising out of or in connection with any damage or loss to the Grantee for the City's failure or

inability to provide rescue services, and will indemnify the City against any and all third-party costs, claims, injuries, damages, losses, suits, or liabilities based on the City's failure or inability to provide rescue services.

D. Acceptance by the City of any work performed by the Grantee will not be grounds for avoidance of this section.

E. It is further specifically and expressly understood that the indemnification provided in this Franchise constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section will survive the expiration or termination of this Agreement.

F. Indemnification for Relocation. Grantee will defend, indemnify, and hold the City harmless for any damages, claims, additional costs or reasonable expenses and attorneys' fees, including contractor construction delay damages, assessed against or payable by the City and arising out of or resulting from Grantee's negligence or willful misconduct contributing to Grantee's failure to remove, adjust, or relocate any of its facilities in the Rights-of-Way in accordance with any relocation required by the City, provided that Grantee will not be liable under this section if Grantee's failure to remove, adjust, or relocate any of its facilities is the result of a force majeure event. A force majeure event is an occurrence that is beyond the control of the Grantee and that could not have been avoided by exercising reasonable diligence. Force majeure events include but are not limited to acts of war, riots, strikes, fire, floods, and epidemics.

Section 14. Insurance

A. The Grantee will procure and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Grantee, its agents, representatives, or employees in the following amounts and types:

1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles with a minimum combined single limit for bodily injury and property damage of \$2,000,000.00 per accident. Coverage will be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy will be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance with limits no less than \$5,000,000.00 each occurrence, \$5,000,000.00 general aggregate and a

\$5,000,000.00 products-completed operations aggregate limit. Coverage will be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent coverage and will cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, and personal injury and advertising injury and liability assumed under an insured contract. The Commercial General Liability insurance will be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85 or an equivalent form. There will be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse, or underground property damage. The City will be named as an additional insured under the Grantee's Commercial General Liability insurance policy with respect to the work performed under this Franchise using ISO Additional Insured Endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

3. Professional Liability insurance with limits no less than \$5,000,000.00 per claim for all professional employed or retained Grantee to perform services under this Franchise.

4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

B. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability, and Commercial General Liability insurance:

1. The Grantee's insurance coverage will be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City will be in excess of the Grantee's insurance and will not contribute with it.

2. The Grantee's insurance will be endorsed to state that coverage will not be cancelled by the insurers except after thirty (30) days' prior written notice has been given to Grantee. Upon receipt of such notice, Grantee will immediately notify by certified mail, return receipt requested, the City.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

D. Verification of Coverage. Grantee will furnish the City with documentation of insurer's A.M. Best rating and with original certificates and a copy of amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of Grantee before commencement of the work.

E. Grantee will have the right to self-insure, or obtain insurance pool coverage for, any or all of the above-required insurance. Any such self-insurance is subject to approval by the City and, upon approval, will satisfy the conditions set forth in Section 14 A - E.

F. Grantee's maintenance of insurance as required by this Franchise will not be construed to limit the liability of Grantee to the coverage provided by that insurance, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 15. Successors and Assignees

A. All the provisions, conditions, regulations and requirements contained in this Franchise are binding upon the successors, assigns of, and independent contractors of the Grantee, and all rights and privileges, as well as all obligations and liabilities of the Grantee will inure to its successors, assignees and contractors.

B. This Franchise will not be leased, assigned or otherwise alienated without the express prior consent of the City by ordinance.

C. Grantee and any proposed assignee or transferee will provide and certify the following to the City not less than sixty (60) days prior to the proposed date of transfer: (a) Complete information setting forth the nature, term and conditions of the proposed assignment or transfer; (b) All information required by the City of an applicant for a Franchise with respect to the proposed assignee or transferee; and, (c) An application fee which will be set by the City, plus any other costs actually and reasonably incurred by the City in processing, and investigating the proposed assignment or transfer.

D. Before the City's consideration of a request by Grantee to consent to a Franchise assignment or transfer, the proposed Assignee or Transferee will file with the City a written promise to unconditionally accept all terms of the Franchise, effective upon transfer or assignment of the Franchise. The City is under no obligation to undertake any investigation of the transferor's state of compliance and failure of the City to insist on full compliance before transfer does not waive any right to insist on full compliance thereafter.

Section 16. Dispute Resolution

A. If there is a dispute between the Parties under this Agreement, the dispute will first be referred to the operational officers or representatives

designated by Grantor and Grantee to have oversight over the administration of this Agreement. The officers or representatives will meet within thirty (30) calendar days of either party's request for a meeting, whichever request is first, and the parties will make a good faith effort to achieve a resolution of the dispute.

B. If the parties fail to achieve a resolution of the dispute in this manner, either party may then pursue any available judicial remedies. This Franchise will be governed by and construed in accordance with the laws of the State of Washington. If any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue will be exclusively in King County, Washington. The prevailing party in any action will be entitled to its attorneys' fees and costs.

Section 17. Enforcement and Remedies

A. If the Grantee willfully violates, or fails to comply with any of the provisions of this Franchise through willful or unreasonable negligence, or it fails to comply with any notice given to Grantee under the provisions of this agreement, the City may, at its discretion, provide Grantee with written notice to cure the breach within thirty (30) days of notification. If the City determines the breach cannot be cured within thirty days, the City may specify a longer cure period, and condition the extension of time on Grantee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Grantee does not comply with the specified conditions, the City may, at its discretion, either (1) revoke the Franchise with no further notification, or (2) impose liquidated damages of Two Hundred Fifty Dollars (\$250.00) per day for every day after the expiration of the cure period that the breach is not cured. The parties agree that the actual damages to the City from Grantee failing to cure are not easily calculated, and agree that the liquidated damages amount are a reasonable forecast of just compensation.

B. If the City determines that Grantee is acting beyond the scope of permission granted in this Franchise for Grantee Facilities and Grantee Services, the City reserves the right to cancel this Franchise and require the Grantee to apply for, obtain, and comply with all applicable City permits, franchises, or other City permissions for such actions, and if the Grantee's actions are not allowed under applicable federal and state or City laws, to compel Grantee to cease those actions.

Section 18. Compliance with Laws and Regulations

A. This Franchise is subject to, and the Grantee will comply with, all applicable federal, state, or City laws, regulations and policies, in conformance

with federal laws and regulations, affecting performance under this Franchise. The Grantee will be subject to the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in the Franchise Area.

B. The City reserves the right at any time to amend this Franchise to conform to any federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City Ordinance enacted pursuant to such federal or state statute or regulation enacted, amended, or adopted after the effective date of this Franchise if it provides Grantee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. The amendment will become automatically effective on expiration of the notice period unless, before expiration of that period, the Grantee makes a written call for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, the City may enact the proposed amendment, by incorporating the Grantee's concerns to the maximum extent the City deems possible.

C. The City may terminate this Franchise on thirty (30) days written notice to the Grantee, if the Grantee fails to comply with such amendment or modification.

Section 19. License, Tax and Other Charges

This Franchise will not exempt the Grantee from any future license, tax, or charge which the City may adopt if authority is granted to it under state or federal law for revenue or as reimbursement for use and occupancy of the Franchise Area.

Section 20. Consequential Damages Limitation

Notwithstanding any other provision of this Agreement, in no event will either party be liable for any special, incidental, indirect, punitive, reliance, consequential or similar damages.

Section 21. Severability

If any portion of this Franchise is deemed invalid, the remainder portions will remain in effect, unless doing so will deny a party valuable consideration.

Section 22. Titles

The section titles are for reference only and should not be used for the purpose of interpreting this Franchise.

Section 23. Implementation.

The Mayor is authorized to implement those administrative procedures necessary to carry out the directions of this legislation.

Section 24. Effective date.

This Ordinance will take effect and be in force five days from and after its passage, approval and publication as provided by law.

INTRODUCED: _____
PASSED: _____
APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

Shawn Campbell, City Clerk

APPROVED AS TO FORM:

Steven L. Gross, City Attorney

Published: _____



PIPELINE 5 City of Auburn ROW Crossing Map

Exhibit A
Franchise Area

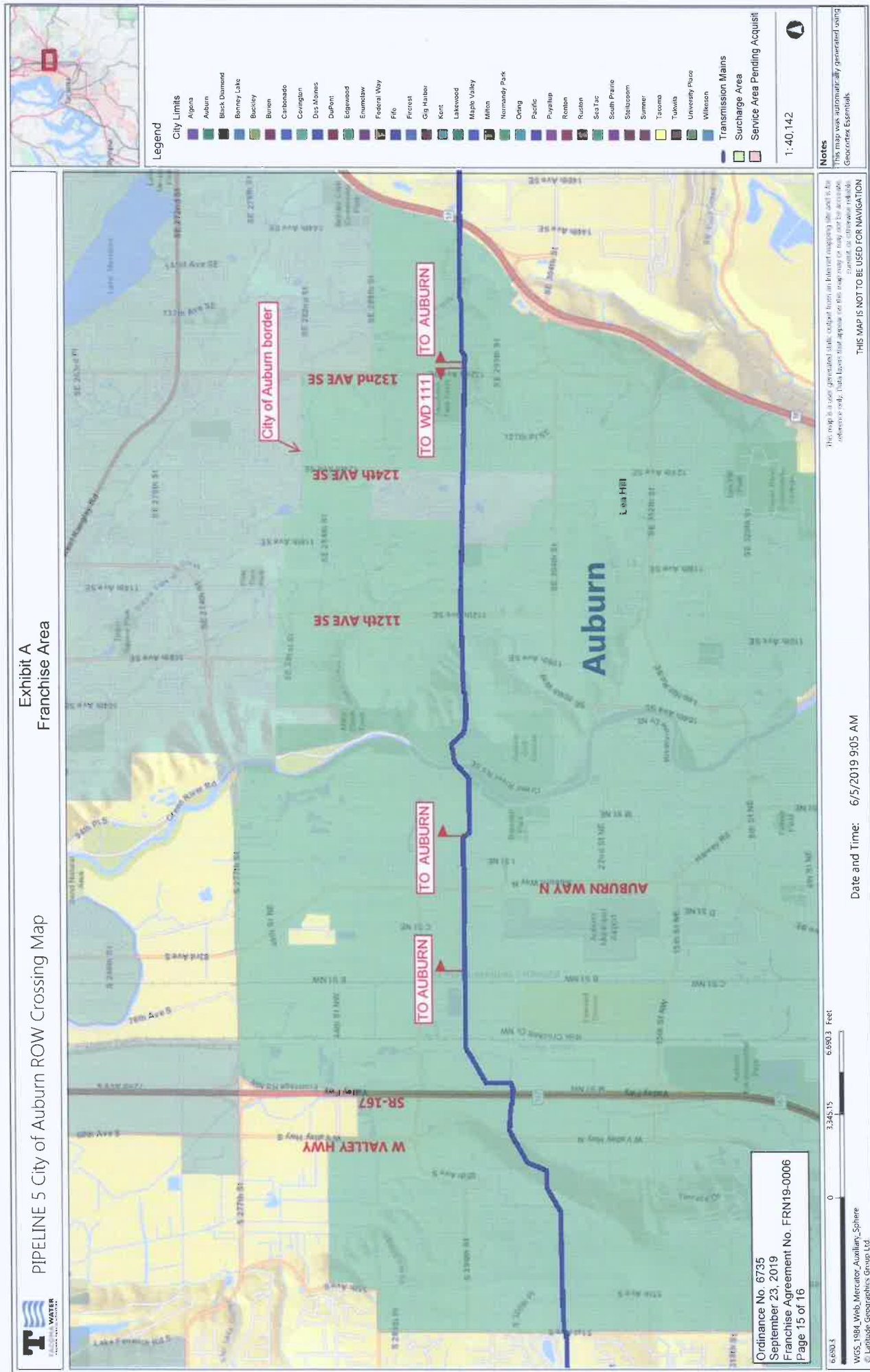


EXHIBIT "B"

STATEMENT OF ACCEPTANCE

City of Tacoma, for itself, its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached hereto and incorporated herein by this reference.

[Grantee]

By: _____
Name: Scott Dewhirst
Title: Water Superintendent

Date: _____

APPROVED AS TO FORM:


DEPUTY CITY ATTORNEY

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 20xx, before me the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared, _____ of _____, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date hereinabove set forth.

Signature

NOTARY PUBLIC in and for the State of _____, residing at _____

MY COMMISSION EXPIRES: _____

AN ORDINANCE OF THE CITY OF AUBURN, WASHINGTON, GRANTING TO THE CITY OF TACOMA AND ITS ASSIGNS, THE RIGHT, PRIVILEGE AND AUTHORITY TO CONSTRUCT AND MAINTAIN A TRANSMISSION MAIN IN CERTAIN STREETS IN THE CITY OF AUBURN FOR THE TRANSMISSION OF FRESH WATER FOR MUNICIPAL PURPOSES.

THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. GRANT AND TERMS. That there be and is hereby granted to the City of Tacoma a municipal corporation and its assigns, the right, privilege, authority and franchise for a period of fifty (50) years from and after passage of this Ordinance to lay down, build, construct and maintain and operate, through and across certain streets of the City of Auburn, underground pipes and conduits for the purpose of transmitting fresh water for municipal purposes.

Section 2. TRANSMISSION MAIN. For the purpose aforesaid, the grantee and its assigns are hereby granted the right, liberty and privilege of laying down, relaying, connecting, disconnecting, and repairing such transmission main through and under the avenues, streets, lanes, alleys and public highways, and public parks and grounds of the City of Auburn as may be necessary, proper and convenient for transmitting the fresh water supply of the grantee through the city limits of the grantor.

Section 3. PLANS AND SPECIFICATIONS. Before said grantee and assigns shall begin the construction of the transmission main underneath the said streets or places in the City of Auburn, it shall file with the City Engineer of the grantor detailed plans, specifications and profiles of the pipeline and shall show the place in said streets or places proposed to be used for and/or crossed by said pipeline, the size of the pipeline and its depth from the surface of the ground. The said plans, specifications and profiles shall be approved by the City Engineer of the grantee and a permit granted for the same before any excavation or the construction of said pipes shall be commenced, which approval shall not be unreasonably withheld. The grantee upon receiving such construction permit shall hasten the work of construction with all convenient speed and shall repair the pavement or surface in as good condition as it was before being disturbed by said grantee and repair it with the same kind of material as now laid on said streets or surface and subject to the approval of the City Engineer of the grantor, shall place an inspector upon the said street during the reconstruction of the pavement thereon and the salary of such inspector shall be paid by the grantee, and said street shall not be torn up in any event for a longer period than ninety (90) days after the said grantee shall begin the work of construction. If the grantee shall fail to build said street or surface in

as good condition as it was before or shall fail to rebuild it at all, the grantor may proceed to repair said street or surface and charge the expense thereof to the grantee. All excavations shall be carefully guarded so as to prevent accidents by reason thereof, and the grantee shall save the grantor free and harmless of and from all costs, damages and expenses of any kind whatsoever occasioned by such work or by the maintenance of such conduits and pipes through and across the street or place and should any final judgment be recovered against said city on account of any damages, said grantee shall forthwith pay the same, including grantor's reasonable attorney fees and costs, after having been notified in writing to do so by the grantor, and the failure of said grantee to make such payment within a period of sixty (60) days after such notice has been given shall operate as a forfeiture of the rights and privileges herein granted; provided, however, that the grantor shall in any suit brought against it on account of such damages and within twenty (20) days after service of process upon it give written notice to the grantee of the pendency of said suit, and thereon, grantee shall have the option of defending said litigation on behalf of the City at its own cost.

Section 4. NOT TO INTERFERE WITH OTHER PIPES. Said pipes shall be laid down in such manner as not to interfere with the sewer or water pipes or any other pipes in said streets and places and all pipes and conduits to be laid down by the grantee shall be of first quality material.

Section 5. FRANCHISE NOT EXCLUSIVE. Nothing in this Ordinance shall be construed as granting to the said grantee and assigns an exclusive right or prevent the granting to other companies or individuals a franchise for like purposes.

Section 6. SERVICE AVAILABILITY. In the event that the City has need for additional domestic water and the grantee determines that it can provide such water from the transmission line and at the rates it charges other consumers, similarly located, the grantee shall so make available points of distribution in order to provide the additional supply so determined.

Section 7. ACCEPTANCE. In order to claim the rights and privileges granted by this franchise, the grantee or assigns shall, within thirty (30) days after the approval of this Ordinance, file with the City Clerk of the grantor its acceptance in writing of the franchise granted by this Ordinance.

Section 8. EFFECTIVE DATE. That this Ordinance shall take effect five (5) days from and after its passage, approval and publication as provided by law.

INTRODUCED: SEPTEMBER 2, 1969

PASSED: SEPTEMBER 15, 1969

APPROVED: SEPTEMBER 15, 1969

ROBERT E. GAINES
M A Y O R

ATTEST:

GENE WILLIAMS
City Clerk

APPROVED AS TO FORM:

ROBERT M. SHYTHE
City Attorney

In Auburn Globe News
PUBLISHED: Sept 7 1969

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, Gene Williams, the duly appointed, qualified, and acting City Clerk of Auburn, a Municipal corporation of the third class, situate in the County of King, State of Washington, do hereby certify that the foregoing is a full, true and correct copy of Ordinance No. 2383, of the ordinances of the said

The City of Auburn, entitled "AN ORDINANCE OF THE CITY OF AUBURN, WASHINGTON, GRANTING TO THE CITY OF TACOMA AND ITS ASSIGNS, THE RIGHT, PRIVILEGE AND AUTHORITY TO CONSTRUCT AND MAINTAIN A TRANSMISSION MAIN IN CERTAIN STREETS IN THE CITY OF AUBURN FOR THE TRANSMISSION OF FRESH WATER FOR MUNICIPAL PURPOSES."

I further certify that said Ordinance No. 2383 was duly passed by the Council and approved by the Mayor of the said The City of Auburn, and published as provided by law in the Auburn Globe-News, a weekly newspaper published in

the City of Auburn, and of general circulation therein, on the 7th day of September, A.D., 1969.

Witness my hand and the official seal of the City of Auburn, this 22nd day of September, A.D., 1969.

(Signed) Gene Williams
CITY CLERK of the CITY OF AUBURN

DIVISIONS
Light
Water
Belt Line



City of Tacoma

WASHINGTON

DEPARTMENT OF PUBLIC UTILITIES
C. A. Erdahl, Director

October 9, 1969

Please address reply to:
City of Tacoma
Department of Public Utilities
P. O. Box 11007
Tacoma, Washington 98411

Attention:

Legal Division

Mr. Gene Williams
City Clerk of the City of Auburn
Auburn, Washington

Dear Sir:

On October 8, 1969, the Public Utility Board adopted Resolution No. U-3463 authorizing the proper officer of the Department of Public Utilities to execute formal acceptance of the franchise rights granted under City of Auburn Ordinance No. 2383.

An original of the Acceptance of Franchise dated October 9, 1969, signed by C. A. Erdahl, Director of Utilities, is enclosed for your files.

Yours very truly,

Paul J. Nolan
Chief Assistant City Attorney

PJN/ab
Enc.

cc: Finance
Central Records
Water Division ✓
Property Management

A. J. Bonduca Water Supply	
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For	Place	For
Approval	Signature Only	Information
For	Place	For Your
Comment	See Me	Files
For	Return to	
Action	Dept. Files	



October 2, 1969

Ken Olson
Water Division
City of Tacoma
P.O. Box 11007
Tacoma, Washington 98411

Dear Ken:

Enclosed is a copy of Ordinance No. 2383, granting to the City of Tacoma authority to construct a water transmission line across certain streets in the City of Auburn.

It is requested that we be kept advised of progress on the planning and design of the line, and that final design be coordinated with us for routing, points of connection to the Auburn system, etc.

Very truly yours,

CITY OF AUBURN

Joseph R. Kempston
Utilities Engineer

Encl.

JRK/oms

A. J. Benedetti Water Supply

To:	
Director	
Legal	
Supt. Light	
Baarslag	98712
Olson	
Roller	
Emigh	
Nichols	
Acheson	
Lemoine	
Dreibelbis	
Customer Svc	
Usher	
Tatum	

For Approval	Please Prepare Reply	For Information
For Comment	Please See Me	For Your Files
For Action	Return to Dept. Files	

ACCEPTANCE OF FRANCHISE

Gene Williams
City Clerk of the City of Auburn
Auburn, Washington

Dear Sir:

The undersigned acknowledges receipt of Ordinance No. 2383 granted and executed by the Mayor of the City of Auburn on September 15, 1969; and the undersigned accepts the same, subject to the terms thereof, pursuant to the authority of Public Utility Board Resolution No. U-3463, adopted October 8, 1969.

Dated at Tacoma, Washington, this 9th day of October, 1969.

CITY OF TACOMA
Department of Public Utilities
By C. A. Erdahl
C. A. Erdahl
Director of Utilities

Approved as to form:

Daniel J. Holan
Chief Assistant City Attorney



20 A STREET N.W., AUBURN, WASHINGTON 98002 • TEmpLe 3-6060

Robert C. Van Siclen
Assistant

SEP 23 '69 AM

ASSISTANT ATTORNEY GENERAL
TR DIVISION

In accordance with my recent telephone conversation with Mr. Edward Olson, I am enclosing herewith a certified copy of City of Auburn Ordinance No. 2383.

1. Benedict, Water Supp
 2. Copy Robert M. Smythe
 3. ROBERT M. SMYTHE,
 4. City Attorney

Enclosure

To:	
Attn:	
For:	
Amount	\$ 00
Total	\$ 00